TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 149.

THE SHAWNEE COMPRESS COMPANY, THE [illegible] COMPRESS COMPANY, T. F. STUBBS, [illegible], APPELLANTS,

vs.

NEIL F. ANDERSON, H. L. ANDERSON, AND [illegible] BURNET, COPARTNERS AS NEIL F. ANDERSON & COMPANY, AND F. M. ANDERSON, H. S. [illegible], AND W. L. CLAYTON, COPARTNERS AS F. M. ANDERSON & CLAYTON & COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

Filing dates illegible.

(20,464.)

(20,434.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 140.

THE SHAWNEE COMPRESS COMPANY, THE GULF COMPRESS COMPANY, T. F. STUBBS, ET AL., APPELLANTS,

vs.

NEIL P. ANDERSON, B. L. ANDERSON, AND MORRIS E. BURNEY, COPARTNERS AS NEIL P. ANDERSON & COMPANY, AND F. E. ANDERSON, M. D. ANDERSON, AND W. L. CLAYTON, COPARTNERS AS ANDERSON, CLAYTON & COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

INDEX.

	Original.	Print.
Caption	*a*	1
Citation	*b*	1
Acceptance of service of citation	*c*	2
Petition for appeal	1	2
Order allowing appeal	2	3
Assignment of errors	3	3
Affidavit of value	6	5
Order fixing amount of supersedeas bond, &c	8	6
Supersedeas bond	10	6
Petition in error	14	9
Waiver of summons in error	15	10

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 2, 1907.

	Original.	Print.
Case-made from district court	16	10
Petition	17	10
Exhibit A—Notice of stockholders' meeting	23	14
B—Minutes of stockholders' meeting, April 24, 1905	24	14
C—Minutes of directors' meeting, April 24, 1905	27	16
D—Minutes of directors' meeting, April 26, 1905	28	17
E—Letter, Stubbs to Anderson, April 26, 1905	30	17
F—Agreement of April 26, 1905	31	18
G—Protest	38	22
H—Minutes of directors' meeting, May 1, 1905	39	22
Affidavit as to absence of district judge	44	24
Order granting temporary injunction	46	25
Bonds for injunction given	47	26
Amended petition	49	26
Demurrer to amended petition	60	33
Order overruling demurrer	62	34
Answer	64	34
Special demurrer and motion to strike out parts of answer	75	41
Order overruling special demurrer, &c	76	41
Reply	77	42
Amendment to amended petition	79	43
Index to testimony	82	44
Offers of exhibits	83	45
Testimony of F. E. Anderson	84	45
C. C. Hanson	94	53
F. E. Anderson (recalled)	142	86
Plaintiff rests	144	87
Testimony of W. H. Beatty	144	87
J. M. Aydelotte	175	108
F. B. Reed	181	112
J. M. Aydelotte (recalled)	183	114
W. H. Beatty (recalled)	183	114
B. L. Anderson	197	124
A. E. Nelson	198	124
C. C. Hanson (recalled)	203	129
W. H. Beatty (recalled)	213	136
T. F. Stubbs	219	140
W. H. Beatty (recalled)	223	143
Defendant rests	232	150
Testimony of H. B. Therman	232	150
F. E. Anderson (recalled)	233	151
B. L. Anderson (recalled)	268	175
Plaintiff rests	269	176
Testimony of H. T. Douglas (recalled)	269	176
Both sides rest	273	178
Exhibit 4—Certificate of incorporation of Shawnee Compress Co	274	178
21—Letter, Beatty to Webb Press Co., Feb. 24, 1905	275	179
14—Telegram, Anderson to Benson, April 25, 1905	276	179
3—Notice of stockholders' meeting, April 13, 1905	277	180
20—Letter, Webb to Shawnee Compress Co., February 16, 1905	277	180

	Original.	Print.
Exhibit 12—Statement of Portis & Douglas, May 1, 1905	279	180
23—Letter, Webb to Shawnee Compress Co., May 24, 1905	279	181
11—Letter, —— to Beatty, August 11, 1904	280	181
10—Letter, Beatty to Anderson, August 9, 1904	281	182
9—Letter, Webb Press Co. to Beatty, Feb. 2, 1905	282	182
22—Letter, Webb to Beatty, March 17, 1905	282	183
15—Telegram, Jones to Manager Shawnee, Apr. 25, —.	283	183
16—Letter, Anderson to Beatty, April 23, 1905	283	183
13—Telegram, Grimes to Benson, April 23, 1905	283	183
1—Articles of incorporation of Shawnee Compress Co., &c	283	184
2—Articles of incorporation of Gulf Compress Co., &c.	290	188
25—Telegram, Anderson to Hanson, April 25, 1905	302	196
26—Telegram, Anderson to Hanson, —— —, ——	303	197
27—Letter, Douglas to Anderson, March 3, 1905	303	197
5—Letter, Hanson to Beatty, April 18, 1905	303	197
28—Letter, Douglas to Anderson, April 24, 1905	305	198
29—Letter, B. L. Anderson to F. E. Anderson, January 25, 1905	306	199
Statement of Shawnee Compress Co., March 31, 1904	307	199
24—Statement	308	200
B—By-laws Shawnee Compress Co., &c	309	200
8—Letter, Blakeney & Maxey to Anderson, June 29, 1905	321	208
18—Letter, Benson to Douglas, May 7, 1903	322	208
17—Letter, Webb to Beatty, April 29, 1905	322	209
Motion for new trial	325	210
Judgment	327	211
Attorney's receipt and agreement as to case-made	329	212
Judge's certificate to case-made	330	213
Order granting leave to file reply brief	332	213
Argument and submission	333	214
Judgment	334	214
Opinion	336	215
Clerk's certificate	343	224

a No. 1810.

NEIL P. ANDERSON ET AL., Plaintiffs in Error,
vs.
THE SHAWNEE COMPRESS COMPANY, a Corporation, *et al.*, Defendants in Error.

Appeal from the Supreme Court of the Territory of Oklahoma to the Supreme Court of the United States.

b In the Supreme Court of the Territory of Oklahoma.

NEIL P. ANDERSON, B. L. ANDERSON, and MORRIS E. BURNEY, Co-partners as Neil P. Anderson & Company; F. E. ANDERSON, M. D. ANDERSON, and W. L. CLAYTON, Co-partners as Anderson, Clayton & Company, Plaintiffs in Error,

—

SHAWNEE COMPRESS COMPANY, a Corporation; THE GULF COMPRESS COMPANY, a Corporation; T. F. STUBBS, W. H. BEATTY, C. C. HANSON, R. E. L. MARTIN, and J. M. AYDALOTTE, Defendants in Error.

Citation on Appeal.

UNITED STATES OF AMERICA:

To Neil P. Anderson, B. L. Anderson, and Morris E. Burney, co-partners as Neil P. Anderson & Company; F. E. Anderson, M. D. Anderson, W. L. Clayton, co-partners as Anderson, Clayton & Company:

You, and each of you, are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden at Washington, on the 18th day of October, 1906, pursuant to an Appeal filed in the Clerk's office of the Supreme Court of the Territory of Oklahoma, wherein Neil P. Anderson, B. L. Anderson, Morris E. Burney, co-partners as Neil P. Anderson & Company; F. E. Anderson, M. D. Anderson, and W. L. Clayton, co-partners as Anderson, Clayton & Company, are Plaintiffs in Error, as Appellees in the Supreme Court of the United States, and The Shawnee Compress Company, The Gulf Compress Company, T. F. Stubbs W. H. Beatty, C. C. Hanson, R. E. L. Martin, and J. M. Aydalotte, Defendants in Error in the said Supreme Court of the Territory
c of Oklahoma, but as Appellants in the Supreme Court of the United States, to show cause, if any there be, why the judgment in said Appeal rendered in the Supreme Court of Oklahoma, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John H. Burford, Chief Justice of the Supreme Court of Oklahoma, this 18th day of September, in the Year of our Lord, 1906.

JNO. H. BURFORD,
Chief Justice of the Supreme Court of the Territory of Oklahoma.

We hereby waive service of the above Citation and consent that said Citation with its Waiver may be filed as a full and complete service upon us and as our appearance on said Appeal.
Dated this Sept. 24" 1906.

JOHN W. SHORTEL,
J. R. KEATON, AND
FRANK WELLS,
Att'ys for Neil P. Anderson et al., Appellees.

d [Endorsed:] No. 1810. In the Supreme Court Oklahoma Territory. Neil P. Anderson *et al. vs.* Shawnee Compress Co. *et al.* Citation on Appeal. Filed Sep. 25, 1906. Benj. F. Hegler, Clerk Supreme Court. *Filed Sep. 25, 1906. Benj. F. Hegler, Clerk Supreme Court.*

1 In the Supreme Court of the Territory of Oklahoma.

NEIL P. ANDERSON, B. L. ANDERSON, and MORRIS E. BURNEY, Co-partners as Neil P. Anderson & Company; F. E. ANDERSON, M. D. ANDERSON, and W. L. CLAYTON, Co-partners as Anderson, Clayton & Company, Plaintiffs in Error,

versus

SHAWNEE COMPRESS COMPANY, a Corporation; THE GULF COMPRESS COMPANY, a Corporation; T. F. STUBBS, W. H. BEATTY, C. C. HANSON, R. E. L. MARTIN, and J. M. AYDALOTTE, Defendants in Error.

Appeal and Allowance.

The above named Defendants in Error, the Shawnee Compress Company, The Gulf Compress Company; T. F. Stubbs, W. H. Beatty; C. C. Hanson; R. E. L. Martin; and J. M. Aydelotte, conceiving themselves aggrieved by the Order entered on September the 4th, 1906, in the above entitled proceeding, do hereby appeal from said Order to the Supreme Court of the United States, and do each of them pray that this their appeal may be allowed, and that a transcript of the record and proceedings, files and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

C. B. AMES,
B. B. BLAKENEY,
J. H. MAXEY, JR.,
Attorneys for Defendants in Error.

2 And now, to wit, on this September 18th, 1906, this cause coming on to be heard upon the foregoing application for appeal, it is hereby ordered that the Appeal be allowed as prayed for.

JNO. H. BURFORD,
[SEAL.] *Chief Justice of the Supreme Court of the Territory of Oklahoma.*

Attest: BENJ. F. HEGLER,
Clerk of the Supreme Court.

Endorsed on the back as follows: No. 1810. In the Supreme Court of Oklahoma Territory. Neil P. Anderson *et al. vs.* Shawnee Compress Co. *et al.* Appeal and Allowance. Filed Sep. 25, 1906. Benj. F. Hegler, Clerk Supreme Court.

3 In the Supreme Court of the United States.

THE SHAWNEE COMPRESS COMPANY, a Corporation; THE GULF COMPRESS COMPANY, a Corporation; T. F. STUBBS, W. H. BEATTY, C. C. HANSON, R. E. L. MARTIN, J. M. AYDALOTTE, Plaintiffs in Error,

versus

NEIL P. ANDERSON, B. L. ANDERSON, and MORRIS E. BURNEY, Co-partners as Neil P. Anderson & Company; F. E. ANDERSON, M. D. ANDERSON, and W. L. CLAYTON, Co-partners as Anderson, Clayton & Company, Defendants in Error.

Assignment of Error.

The Appellants in said cause being Defendants in Error in the Court below, in connection with its Appeal and part thereof, make the following Assignment of Error, which they aver occurred upon the trial, hearing, and decision of the said cause, to-wit:

First. The Supreme Court of the Territory of Oklahoma erred in not affirming the judgment of the trial court in said cause.

Second. Said Court erred in holding that the certain Contract of Lease, which was cancelled by the decision of the said Supreme Court of the Territory of Oklahoma, was invalid because the same and its terms was contrary to public policy.

Third. The said Court erred in holding that the said certain Contract of Lease, which was cancelled as aforesaid by the Supreme Court of the Territory of Oklahoma, was invalid because the same and its terms tended to and did create and was made in furtherance of a trust, combination and monopoly.

Fourth. The said Court erred in deciding and holding that the said lease was invalid, and in enjoining the execution of same and if same was executed ordering same cancelled.

4 *Fifth.* The said Court erred in holding and decreeing a cancellation of the lease in Controversy in said action.

Sixth. The said Court erred in reversing the judgment of the District Court of Pottawatomie County and entering Judgment herein and in not remanding the cause for a new trial.

Seventh. That the said Court erred in holding to the principle and statement of law found in the Second Paragraph of the Syllabi, and holding to the following proposition therein stated, to-wit:

"A corporation known as the Gulf Compress Company, was organized under articles of Incorporation which stated that it was to conduct a general storage and compress business; its capital stock, originally $25,000.00, was increased to $1,000,000.00, of which $600,000.00 was in the form of Treasury stock; it appeared that the object of the corporation was to gain control of the compress business in the cotton producing area, by means of purchase or lease, exacting from the lessor or vendor in every case a contract that such lessor corporation would not for a term of years engage in a like business 'within fifty miles of any compress operated by the lessee,' and that the lessor's members, 'individually and collectively' would render every assistance 'in discouraging unreasonable and unnecessary competition.' *Held*, that such corporation, The Gulf Compress Company, so conducted, is unlawful and against public policy, its operation tending to the unreasonable restraint of trade, the prevention of competition and the establishment of a monopoly."

Eighth. That the said Court erred in holding to the statement and principle of law stated in the 3rd paragraph of said Syllabi and in holding that the following is a correct statement of the law:

"And where, in such case, a corporation, known as the Shawnee Compress Company, formed for the local compression of cotton, undertakes because of the exigencies of its financial situation, to release its entire property to said Gulf Compress Company for a period of years, and in such lease to agree not to engage in the business of compressing of cotton 'within fifty miles of any plant operated by the Gulf Compress Company,' and to aid such Gulf Company 'in discouraging unreasonable and unnecessary competition,' *Held*, that the execution of such lease will be perpetually enjoined, or if executed, the contract, will be declared an unreasonable restraint of trade therefore void on the grounds of public policy."

Ninth. The Court erred in not affirming the judgment of the District Court of Pottawatomie County, Oklahoma Territory because the appellees, the plaintiffs in error in the Supreme Court of Oklahoma did not come into court with clean hands.

Wherefore, the said Shawnee Compress Company, the Gulf Compress Company, T. F. Stubbs, W. H. Beatty, C. C. Hanson, R. E. L. Martin and J. M. Aydalotte pray that the order of the said Supreme Court of the Territory of Oklahoma be reverse-, and that the said Supreme Court of the Territory of Oklahoma be ordered to enter an order affirming the decision of the lower court in said cause.

C. B. AMES,
B. B. BLAKENEY,
J. H. MAXEY, JR.,
Attorneys for Shawnee Compress Co., Gulf Compress Company, T. F. Stubbs, W. H. Beatty, C. C. Hanson, R. E. L. Martin, and J. M. Aydalotte, Appellants.

[Endorsed:] No. 1810. In the Supreme Court of United States. Neil P. Anderson *et al vs.* Shawnee Compress Co. *et al.* Assignment of Errors. Filed Sep. 25, 1906. Benj. F. Hegler, Clerk Supreme Court.

6 In the Supreme Court of the Territory of Oklahoma.

NEIL P. ANDERSON, B. L. ANDERSON, and MORRIS E. BURNEY, Co-partners as Neil P. Anderson & Company; F. E. ANDERSON, M. D. ANDERSON, and W. L. CLAYTON, Co-partners as Anderson, Clayton & Company, Plaintiffs in Error,

versus

SHAWNEE COMPRESS COMPANY, a Corporation; THE GULF COMPRESS COMPANY, a Corporation; T. F. STUBBS, W. H. BEATTY, C. C. HANSON, R. E. L. MARTIN, and J. M. AYDELOTTE, Defendants in Error.

Affidavit.

TERRITORY OF OKLAHOMA, *County of Lincoln, ss:*

Before the undersigned, a clerk of the District Court in and for said County, personally appeared B. B. Blakeney, who being duly sworn by me, upon his oath says that he is one of the Attorneys of record of the above named defendants in Error, and that the amount in controversy in said cause exclusive of costs, exceeds five thousand dollars ($5,000.00).

B. B. BLAKENEY.

Subscribed and sworn to before me this 18th day of September, 1906.

[SEAL.] J. H. NORRIS, *Clerk*,
By D. J. NORTON, *Dept.*

My commission expires —.

Endorsed on the back as follows: No. 1810. In the Supreme Court of the Territory of Oklahoma. Neil P. Anderson, *et al. vs.*
7 Shawnee Compress Co. *et al.* Affidavit of B. B. Blakeney. Filed Sep. 25, 1906, Benj. F. Hegler, Clerk Supreme Court.

8 In the Supreme Court of the Territory of Oklahoma.

NEIL P. ANDERSON, B. L. ANDERSON, and MORRIS E. BURNEY, Co-partners as Neil P. Anderson & Company; F. E. ANDERSON, M. D. ANDERSON, and W. L. CLAYTON, Co-partners as Anderson, Clayton & Company, Plaintiffs in Error,

vs.

SHAWNEE COMPRESS COMPANY, a Corporation; THE GULF COMPRESS COMPANY, a Corporation; T. F. STUBBS, W. H. BEATTY, C. C. HANSON, R. E. L. MARTIN, and J. M. AYDELOTTE, Defendants in Error.

Order.

This cause coming on to be heard this 18th day of September, 1906, upon application of the Defendants in Error for an Appeal to the Supreme Court of the United States, and said appeal having been allowed, it is ordered that the same shall operate as a Supersedeas, when the said Defendants in Error shall execute a bond in the penal sum of Six thousand no/100 Dollars ($6000.00) with sufficient sureties as provided by law. The said sum being the amount fixed by me at which said Defendants in Error shall make bond to stay such judgment, and the Clerk of said Court is hereby directed to stay the Mandate of the District Court of Pottawatomie County for a period of fifteen days to enable plaintiffs to execute said bond.

[SEAL.] JNO. H. BURFORD,
Chief Justice of the Supreme Court of the Territory of Oklahoma.

Attest:
BENJ. F. HEGLER,
Clerk Supreme Court.

9 Endorsed on the back as follows: No. 1810. In the Supreme Court of Oklahoma Territory. Neil P. Anderson, *et al. vs.* Shawnee Compress Co. *et al.* Order. Filed Sep. 25, 1906. Benj. Hegler, Clerk Supreme Court.

10 In the Supreme Court of the Territory of Oklahoma.

NEIL P. ANDERSON, B. L. ANDERSON, and MORRIS E. BURNEY, Co-partners as Neil P. Anderson & Company; F. E. ANDERSON, M. D. ANDERSON, and W. L. CLAYTON, Co-partners as Anderson, Clayton & Company, Plaintiffs in Error,

versus

THE SHAWNEE COMPRESS COMPANY, a Corporation; THE GULF COMPRESS COMPANY, a Corporation; T. F. STUBBS, W. H. BEATTY, C. C. HANSON, R. E. L. MARTIN, and J. M. AYDELOTTE, Defendants in Error.

KNOW all men by these presents: That the Shawnee Compress Company, a corporation; The Gulf Compress Company, a corpora-

tion; W. H. Beatty, C. C. Hanson, and R. E. L. Martin, as principals, and The Columbia Bank and Trust Company, as surety, are held and firmly bound unto the above named Neil P. Anderson, B. L. Anderson, Morris E. Burney, as Neil P. Anderson & Company; F. E. Anderson, M. D. Anderson, W. L. Clayton, co-partners as Anderson, Clayton & Company, in the sum of six thousand ($6,000.00) dollars, to be paid to the said above named plaintiffs in Error, Neil P. Anderson, B. L. Anderson, Morris E. Burney, co-partners as Neil P. Anderson & Company; F. E. Anderson, M. D. Anderson, W. L. Clayton, co-partners as Anderson, Clayton & Company, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

11 Sealed with our seals and dated the 18th day of September, 1906.

Whereas, the above named Shawnee Compress Company, the Gulf Compress Company, W. H. Beatty, C. C. Hanson and R. E. L. Martin, has prosecuted an appeal to the Supreme Court of the United States to reverse the decree in the judgment rendered in the above entitled suit by the Supreme Court of the Territory:

Now therefore, the condition of this obligation is such that if the above named Shawnee Compress Company, the Gulf Compress Company, W. H. Beatty, C. C. Hanson and R. E. L. Martin, shall prosecute said Appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void, otherwise to remain in full force and effect.

[SEAL.] THE SHAWNEE COMPRESS COMPANY,
By B. B. BLAKENEY, *President.*

Attest:
W. H. BEATTY, *Secretary.*

[SEAL.] THE GULF COMPRESS COMPANY,
By C. C. HANSON, *President.*

Attest:
R. E. L. MARTIN, *Secretary.*

W. H. BEATTY.
C. C. HANSON.
R. E. L. MARTIN.

Witness as to individual signatures of C. C. Hanson & R. E. L. Martin,
G. T. FITSHUGH.

[SEAL.] THE COLUMBIA BANK AND TRUST CO.,
By C. R. BROOKS, *President.*

Attest:
W. E. HODGES, *Secretary.*

Approved Sept. 24, 1906.
JNO. H. BURFORD,
Chief Justice.

Endorsed on the back as follows: No. 1810. Neil P. Anderson, *et al. vs.* The Shawnee Compress Company, *et al.* Supersedeas Boand. Filed Sep. 26, 1906, Benj. F. Hegler, Clerk Supreme Court.

12 *Certificate.*

TERRITORY OF OKLAHOMA, *County of Logan, ss:*

I, C. W. Rambo, Territorial Treasurer of the Territory of Oklahoma, do hereby certify that the Columbia Bank and Trust Company, a corporation of Oklahoma City, Oklahoma Territory, has fully complied with the laws of this Territory relative to the organization of savings and trust companies in this Territory, and pursuant to the requirements thereof has duly deposited with me, as Treasurer of the Territory of Oklahoma, securities and money in the aggregate sum of Fifty Thousand ($50,000.00) Dollars, and

That the said The Columbia Bank and Trust Company is now authorized, under the laws of this Territory and permitted to qualify as guardian, executor, administrator, assignee, receiver, and trustee either by deed, will or judicial appointment, without giving bond as such, or to become sole guarantor or surety in or upon any bond required to be given under the laws of this Territory, and to insure the fidelity of persons holding places of public or private trust.

In witness whereof, I have hereunto set my hand at Guthrie Oklahoma, this the 8th day of November, 1905.

C. W. RAMBO,
Territorial Treasurer of the Territory of Oklahoma.

I, C. W. Rambo, treasurer of Oklahoma Territory, do hereby certify that the above is a true and perfect copy of the certificate issued by me as such Treasurer, to the Colum-ia Bank and Trust Company of Oklahoma City, Oklahoma, on the 8th day of November, 1905.

Dated this 22 day of November, 1905.

C. W. RAMBO.

13 Endorsed on the back as follows: 1810. Neil P. Anderson, *et al. vs.* The Shawnee Compress Co., *et al.* Certificate of Territorial Treasurer as to the Columbia Bank and Trust Co. Filed Sept. 26, 1906. Benj. F. Hegler, Clerk Supreme Court.

14 In the Supreme Court of the Territory of Oklahoma.

No. 1810.

NEIL P. ANDERSON, B. L. ANDERSON, and MORRIS E. BURNEY, Co-partners as Neil P. Anderson & Company, and F. E. ANDERSON, M. D. ANDERSON, and W. L. CLAYTON, Co-partners as Anderson, Clayton & Company, Plaintiffs in Error,

vs.

THE SHAWNEE COMPRESS COMPANY, a Corporation; GULF COMPRESS COMPANY, a Corporation; T. F. STUBBS, W. H. BEATTY, J. M. AYDELOTTE, and C. C. HANSON, Defendants in Error.

Petition in Error.

Plaintiffs in error above named complain of said defendants in error, for that they (defendants in error), at the September 1905, term of the District Court of Pottawatomie County, Territory of Oklahoma, recovered a judgment, by the consideration of said court, against the said plaintiffs in error, in a certain action then pending in said court wherein the said plaintiffs in error were plaintiffs and the said defendants in error were defendants, all of which appears more fully from the original case-made, duly certified and attested, which is hereunto attached, made a part hereof and marked Exhibit "A" of this petition in error; and the said plaintiffs in error aver that there is error in the said record and proceedings in this, to wit:

First. Said district Court erred in overruling the motion of plaintiffs in error for a new trial.

Second. Said court erred in overruling the special demurrer of plaintiffs to certain paragraphs of the answer of defendants:

Third. Said court erred in admitting certain incompetent evidence on the part of defendants in error.

Fourth. Said court erred in refusing and ruling out certain competent and legal evidence offered on the part of plaintiffs in
15 error.

Fifth. Said court erred in not rendering judgment for the plaintiffs in error on the pleadings and the evidence.

Wherefore, plaintiffs in error pray that said judgment so rendered be reversed, set aside and held for naught, and that a judgment be ordered to be rendered in favor of these plaintiffs in error and against the defendants in error, and that said plaintiffs in error be restored to all rights which they have lost by the rendition of such judgment, and for such further relief as to this court may seem just and proper.

SHARTEL, KEATON & WELLS,
Attorneys for Plaintiffs in Error.

Filed Oct. 20, 1905,

BENJ. F. HEGLER,
Clerk Supreme Court.

2—140

We, the undersigned attorneys of record for defendants in error above named, do hereby waive the issuance and service of summons in error, and enter an appearance to said proceeding in error in the supreme court of the Territory of Oklahoma on behalf of said defendants in error.

Witness our hands, this 19 day of October, 1905.

BLAKENEY & MAXEY AND
J. H. WOODS,
Attorneys for Defendants in Error.

Filed Oct. 20, 1905.

BENJ. F. HEGLER,
Clerk Supreme Court.

16 TERRITORY OF OKLAHOMA, *County of Pottawatomie, ss:*

In the District Court.

NEIL P. ANDERSON, B. L. ANDERSON, and MORRIS E. BURNEY, Co-partners as Neil P. Anderson & Company; F. E. ANDERSON, M. D. ANDERSON, and W. L. CLAYTON, Co-partners as Anderson, Clayton & Company, Plaintiffs,

vs.

SHAWNEE COMPRESS COMPANY, a Corporation; GULF COMPRESS COMPANY, a Corporation; T. F. STUBBS, W. H. BEATTY, C. C. HANSON, and R. E. L. MARTIN, and J. M. AYDELOTTE, Defendants.

Case-made.

Be it remembered, that heretofore, to wit, on the 2nd day of May, 1905, said above named plaintiffs commenced their action against said defendants, by filing in the district court of Pottawatomie County, of that date, their petition, which, together with the exhibits thereto attached and endorsements thereon, is in the words and figures following, to wit:

17 TERRITORY OF OKLAHOMA, *County of Pottawatomie, ss:*

In the District Court.

NEIL P. ANDERSON, B. L. ANDERSON, and MORRIS E. BURNEY, Co-partners as Neil P. Anderson & Company; F. E. ANDERSON, M. D. ANDERSON, and W. L. CLAYTON, Co-partners as Anderson, Clayton & Company, Plaintiffs,

vs.

SHAWNEE COMPRESS COMPANY, a Corporation; GULF COMPRESS COMPANY, a Corporation; T. F. STUBBS, W. H. BEATTY, C. C. HANSON, and R. E. L. MARTIN, and J. M. AYDOLOTE, Defendants.

Petition.

Comes now the plaintiffs above named, and for cause of action against said defendants, allege:

1. That plaintiffs, Neil P. Anderson, B. L. Anderson, and Morris E. Burney are co-partners and constitute the firm of Neil P. Ander-

son & Company, which said firm owns sixty nine shares of One Hundred Dollars each of the capital stock of the Shawnee Compress Company, and that plaintiffs, F. E. Anderson, M. D. Anderson, and W. L. Clayton are co-partners, and constitute the firm of Anderson, Clayton & Company, which said firm owns sixty four shares of One Hundred Dollars each of the capital stock of the said Shawnee Compress Company.

2. That defendant, Shawnee Compress Company, is a corporation duly and legally organized under the laws of the Territory of Oklahoma, with a capital stock of Fifty thousand Dollars, divided into shares of One Hundred Dollars each, all of which said capital stock has been subscribed and issued; that defendant, T. F. Stubbs,
18 claims to be President of said Shawnee Compress Company, and assumes to act as such and defendant W. H. Beatty, claims to be Secretary of said Company, and assumes to act as such; that defendant, J. M. Aydelotte, claimed to be the President of said Company, and assumed to act as such, for several years prior to April 24, 1905; that defendant, Gulf Compress Company is a corporation created and existing under the laws of the state of Alabama, and defendant, C. C. Hanson, claims to be the President thereof, and assumes to act as such. and defendant, R. E. L. Martin, claims to be, and assumes to act as Secretary thereof.

3. That some time prior to April 13, 1905, certain of the stockholders acting as and claiming to be officers of the said Shawnee Compress Company, without any legal cause or excuse therefor, conceived the idea of leasing the entire property, and business of said Company, together with its good will and the right to operate the business thereof, to said defendant, Gulf Compress Company, a foreign corporation, and on said 13th day of April, 1905, said defendant, J. M. Aydelotte, assuming to act as President of the said Shawnee Compress Company, sent to the firms of Neil P. Anderson & Co., and Anderson, Clayton & Company, a notice, that there would be a meeting of the stockholders of said Company held at its office in Shawnee, on April 24, 1905, at 11 o'clock A. M., a true and complete copy of one of which said notices is hereto attached, made a part hereof, and marked Exhibit "A" of this petition. That at said pretended meeting of stockholders held on said 24th day of April, 1905, certain of the stockholders of said Company, representing or assuming to represent a majority of the stock of said Company, over the protest and objection of, and without any legal cause or excuse therefor, these plaintiffs passed a motion to accept a certain proposition made by the said Gulf Compress Company, of Memphis, and authorized and directed the appointment of a certain committee of three, and consisting of F. E. Anderson, C. J. Benson, and
19 W. H. Beatty, to accept said proposition and negotiate a lease to the said Gulf Compress Company, of the entire property & business of said former company, for a period of five years for six thousand dollars per annum. The said stockholders claiming and assuming to represent a majority of the stock of said company, also, passed certain resolutions pretending to amend the by-laws of said

Company, and to elect a board of directors therefor, consisting of three members, to wit: T. F. Stubbs, F. E. Anderson, and W. H. Beatty, and the minutes of said meeting kept by the said W. H. Beatty, acting as Secretary thereof, contain the following false statement, to wit: "Elected by ballot by unanimous vote of the stockholders present," there having been, in fact, no vote taken by ballot upon any proposition, and the said F. E. Anderson and B. L. Anderson not voting the stock represented by them either one way or the other on the pretended resolutions amending the by-laws and electing a board of directors consisting of only three members. A full and correct copy of the proceedings had at said meeting as shown by the minutes kept by said Secretary, and which minutes are substantially correct, except as hereinbefore stated, is hereto attached, and made a part hereof, and marked Exhibit "B."

That immediately following the adjournment of said pretended stockholder's meeting of the said Shawnee Compress Company, a pretended meeting of the said three directors designated and chosen by said pretended resolutions of said stockholders held a meeting and assumed and pretended to elect the following officers, to wit: T. F. Stubbs, president, F. E. Anderson, Vice president, W. H. Beatty, secretary, a copy of the minutes of said pretended meeting of said parties claiming and assuming to act as directors, being hereto attached, made a part hereof, and marked Exhibit "C."

That thereafter, and on the 25th day of April, 1905, said T. F. Stubbs, and W. H. Beatty assuming to act as president and secretary, respectively, of said Shawnee Compress Company, wired plaintiff, F. E. Anderson, to the effect that a meeting of said pretended board of directors would be held in the City of Shawnee, on April 26, 1905, at 4 o'clock P. M., and as plaintiffs are informed, and believe, a pretended meeting of said board was held at said time, at which the said Stubbs and Beatty were the only parties present, and they assumed to take certain proceedings as shown by the minutes of said meeting, kept by the said Beatty, a true and complete copy of which said minutes are hereto attached, made a part hereof, and marked Exhibit "D."

That thereafter and on said April 26, 1905, the said Stubbs and Beatty, assuming to act as President and Secretary of said Company, respectively sent to plaintiff F. E. Anderson, a notice stating that a meeting of said pretended board of directors would be held at the office of the company in the City of Shawnee, on the 1st day of May, 1905 at the hour of 4 o'clock P. M., a true and complete copy of which said notice being hereto attached, made a part hereof, and marked Exhibit "E."

That on said 26th day of April, 1905, the said T. F. Stubbs, and W. H. Beatty, as president and secretary of said Shawnee Compress Company respectively assumed to execute a written lease to said defendant, Gulf Compress Company, on behalf of said Shawnee Compress Company, a true and complete copy of which said lease being hereto attached, made a part hereof, and marked Exhibit "F."

That thereafter, and on the said 1st day of May, 1905, a meeting

of said pretended board of directors was held at the office of said Company, in the city of Shawnee, which said meeting was attended by said T. F. Stubbs, F. E. Anderson, and W. H. Beatty, and the first proposition coming before said pretended board of directors, was the approval of the minutes of the meetings of April 24, and 26, 1905, whereupon, the said F. E. Anderson, filed a written protest and objection to said pretended board, taking any action on said
21 matter, or upon any other matter, A true and complete copy of which said protest is hereto attached, made a part hereof, and marked Exhibit "G."

That said Beatty and Stubbs, claiming and assuming to act as members of said board of directors over the said objection and protest of said plaintiff took certain other proceedings relative to the pretended leasing of the entire property, and business of the said Shawnee Compress Company to the said Gulf Compress Company, which said pretended proceedings are shown by the minutes of said meeting of May 1, 1905, a true and complete copy of which is hereto attached, made a part hereof, and marked Exhibit "H."

4. These plaintiffs further allege, that all of the proceedings had, at the said pretended stockholders meeting of the said Shawnee Compress Company held on April 24, 1905, and the said directors' meetings held respectively on April 24, 26th, and May 1, 1905, relating to and pretending to authorize the leasing of the said property and business, good will, etc., of the said Shawnee Compress Company, are wholly illegal and beyond the legal powers and authority of the said stockholders and directors of said corporation. That the purpose for which said corporation was organized, are to construct and operate a cotton compress in the said City of Shawnee, County of Pottawatomie, Territory of Oklahoma, for the purpose of receiving, compressing, weighing, storing, buying, handling selling and ginning cotton, and the stockholders and officers of said company are not authorized to execute a lease for a period of years vesting in another and foreign corporation the rights duties, and business of said Company: That the said pretended board of directors which were attempted to be selected and chosen at the said pretended meeting of stockholders on April 24, 1905, were never legally elected, and have no legal power or authority to represent the said Shawnee Compress Company, as its board of directors,
22 under the Articles of Incorporation, and by-laws of said Company, and that the said parties so claiming to be the members of the Board of Directors of said Company, and assuming to act therefor, have no legal power or authority to bind said Company to the said pretended contract or lease, and the said contract of lease is void, as against the right of these plaintiffs, being minority stockholders of the said Shawnee Compress Company.

Wherefore, these plaintiffs pray that said pretended lease contract be declared null and void, and that same be cancelled and set aside, and that a decree be entered upon final hearing, enjoining the said T. F. Stubbs and W. H. Beatty, assuming to act as President and Secretary of said Company, respectively, from executing or taking any further proceedings of any kind whatever, looking to

the execution of a lease of the property business, etc., of the said Shawnee Compress Company to the said Gulf Compress Company, and from turning over any of the property of said former Company to the latter and for all other or just and equitable relief, together with the recovery of the costs of this action, including a reasonable attorney's fee, to be taxed as a part of such costs. That in the meantime, a temporary injunction be granted against said Stubbs & Beatty, as such officers.

SHARTEL, KEATON & WELLS,
Attorneys for Plaintiffs.

TERRITORY OF OKLAHOMA, *County of Oklahoma, ss:*

Comes now Neil P. Anderson, and F. E. Anderson, who, being first duly sworn, on oath say that they are two of the plaintiffs in the above entitled action, and are members respectively of the firm of Neil P. Anderson & Company, and Anderson, Clayton & Company; that they have read the above and foregoing petition, and that the matters and things stated therein are true.

NEIL P. ANDERSON.
23 F. E. ANDERSON.

Subscribed and sworn to before me this 2nd day of May, 1905.
[SEAL.] VINNIE LAMB,
Notary Public.

My commission expires July 31, 1905.

EXHIBIT "A."

Notice of Stockholders' Meeting.

SHAWNEE, OKLA., *April 13th*, 1905.

Messrs. Anderson, Clayton & Company, Oklahoma City, Okla.

GENTLEMEN: A special meeting of the stockholders of the Shawnee Compress Company is hereby called to be held at the Company's office in Shawnee, Monday, April 24th, 1905, at 11:00 A. M.

Yours truly, J. M. AYDELOTTE, *President.*

24 Ex. "B."

Minutes of Stockholders' Meeting April 24th, 1905.

Shawnee Compress Co.

The following stockholders were present representing number of shares as shown:

F. E. Anderson,	64.
C. J. Benson,	40
W. H. Beatty,	133
" by proxy,	28½
B. L. Anderson	69
T. F. Stubbs,	133
Total	467½

The meeting was called to order by Vice-President F. E. Anderson, chairman chosen. The minutes of the last meeting June 17th, 1904 were called for, read by the secretary and after reading, were on motion accepted and approved.

The financial status of the Company was presented by the Secretary showing that the only debts of the corporation were: balance due Webb Press Company L't'd $11,250.00, on first*ing* mortgage $6,000.00 on second mortgage due Shawnee National Bank and overdraft with some $200.00 to $300.00 probable excess of accrued interest over cash assets in hand. The fact that said above indebtedness stood in present past due shape, was presented to the stockholders for their consideration, and, after discussion during which the secretary stated arrange*ments* could be made to renew or extend the Webb debt at 6% interest, and get the second mortgage loan of $6000.00 carried for one or two years at 8%, it was ordered on motion of C. J. Benson, seconded by F. F. Stubbs, that said arrangements be made and the necessary papers be executed by the President and Secretary,
25 rates of interest not to exceed as stated, 6% on first mortgage, and 8% on second mortgage.

On motion that a lease proposition which had been received by the Secretary from the Gulf Compress Company, of Memphis, be submitted for the consideration of the stockholders, same was read by Secretary, together with terms of said proposed lease, and, after a full, discussion of same, upon motion of F. F. Stubbs, seconded by C. J. Benson, a committee of three composed of F. E. Anderson, C. J. Benson, and W. H. Beatty, were authorized to confer with said Gulf Compress Company, empowered and instructed to close said lease at best annual price obtainable accepting, if no better price could be obtained from them, $6000.00 as offered, for the five years per terms submitted.

The motion carried by vote Benson, Beatty, Stubbs, for total 334½ shares; against F. E. Anderson, B. L. Anderson, 133 shares.

The following resolution was submitted by the secretary, and, after full reading and discussion, was unanimously adopted and ordered spread on the minutes, and copy of same sent to each stockholder.

"Resolution of the stockholders of the Shawnee Compress Company at the meeting duly called, held on the 24th day of April 1905, resolved: That Whereas, the Articles of Incorporation and the Charter of the Shawnee Compress Company fixed the number of the Board of Directors of said corporation, at three, and Whereas, Section One, of Article One of the By-laws of said Corporation fixes the number of Board of Directors at nine, therefore, be it resolved that section one of Article one of the by-laws of said corporation be amended so as to read as follows:

Section One: Management of the affairs of this corporation, shall be vested in a Board of three Directors, who, at all times shall be stockholders; they shall hold their office for a term of one year, or until their successors are elected and duly qualified.

That said original Section One of the By-laws, be, and the
26 same is hereby repealed.

Be it further resolved, that in order to comply with the

Charter and Articles of Incorporation the following named persons be and are hereby elected as a Board *of* Directors of said Corporation, to hold said office until their successors are elected and qualified, to wit: T. F. Stubbs, F. E. Anderson, and W. H. Beatty. Elected by ballot by unanimous vote of stockholders present, in order named as follows, W. H. Beatty, T. F. Stubbs, F. E. Anderson.

Be it further resolved, that said Board of Directors shall constitute an executive committee of said Board and that Section eight, of the aforesaid by-laws be and the same is hereby repealed.

Be it further resolved, that Section one of Article three, of the aforesaid by-laws of this corporation, be and the same is hereby amended so as to read as follows:

Section One. The annual meeting of the stockholders of this corporation shall be held on the first Tuesday of June, in each year, at the office of the corporation in Shawnee, Oklahoma Territory, when they shall elect, by plurality vote, by ballot, a Board of Three Directors to serve for the ensuing year, and that said original section One, of Article three, be, and the same is hereby repealed.

Motion carried.

We, the undersigned, hereby certify that the above and foregoing resolutions and by-laws were adopted at a meeting of the stockholders of said corporation, held in the City of Shawnee, Oklahoma, by unanimous vote of the Stock represented as set forth in the minutes of the meeting.

W. H. BEATTY,
T. F. STUBBS,
W. H. BEATTY, *Sec'y;*
Directors.

27 EXHIBIT "C."

Minutes of Directors' Meeting April 24th, 1905.

Immediately upon adjournment of the meeting of the stockholders the Directors were called to order by Chairman F. E. Anderson. The resignation in writing of Mr. J. M. Aydelotte, as President, was presented and on motion accepted. An election of officers was held, and the following named stockholders were elected upon nominations duly seconded, voted upon separately in order named by unanimous vote: T. F. Stubbs, President; T. E. Anderson, Vice-President; W. H. Beatty, Secretary and Treasurer.

Ordered by the Board, that the books of the corporation both of the Secretary and Treasurer, and of the Superintendent, be audited, by competent accountant, and that F. E. Anderson be and is hereby authorized to employ such accountant and have auditing done as early as practicable.

On motion Board adjourned.

W. H. BEATTY, *Secretary.*

28 EXHIBIT "D."

Meeting of Directors of the Shawnee Compress Company, Held April 26th, 1905, at 4 o'clock P. M. in the Office of the Company in the City of Shawnee, Okla.

Be it remembered, That at a special meeting of the Board of Directors of the Shawnee Compress Company called by order of the President on April 25th, 1905, each and all of the directors having been duly notified of the time and place of such meeting, as by law provided,

There were present, Mr. W. H. Beatty, and Mr. T. F. Stubbs, being a majority of the Board of Directors. The meeting was called to order by the President, at 4:05 P. M., on motion of Mr. W. H. Beatty, the Board adopted the following resolution, to wit:

"Be it resolved by the Board of Directors of the Shawnee Compress Company in meeting assembled that the President and Secretary of this Company be authorized and instructed to enter into a contract of lease with the Gulf Compress Company, a corporation organized under and by virtue of the laws of the States of Alabama, leasing all of the property of this corporation (The Shawnee Compress Company) to the said Gulf Compress Company for the period of five years, beginning September 1st, 1905, and extending through the cotton seasons of 1905,06, 1906/07, 1907/08, 1908/09, 1909/10, for and in consideration of the annual rental of $6,000.00, payments to be made in installments of $500.00 on the 1st day of each and every month beginning with October 1st, 1905, and that the president and the secretary be authorized to arrange the details of the said lease with the said Gulf Compress Company, but the same shall not be in conflict with the terms of this resolution."

There being no further business before the board, on mo-
29 tion the meeting adjourned.

T. F. STUBBS, *President.*
W. H. BEATTY, *Sec'y.*

30 EXHIBIT "E."

SHAWNEE, OKLAHOMA, *April* 26, 1905.

F. E. Anderson, Esq., Oklahoma City, O. T.

DEAR SIR: You are hereby notified that a meeting of the Board of Directors of the Shawnee Compress Company will be held at its office in the City of Shawnee, Oklahoma, on the first day of May 1905, at the hour of four o'clock P. M. of the said date, to transact any business which may come before the meeting.

T. F. STUBBS, *President.*

Attest:
W. H. BEATTY, *Secretary.*

31 EXHIBIT "F."

This Agreement, made and entered into this, the 26th day of April, 1905, by and between the Shawnee Compress Company, a corporation created and existing under the laws of the Territory of Oklahoma, hereinafter called the Landlord, of the first part, and the Gulf Compress Company, a corporation created and existing under the laws of the State of Alabama, hereinafter called the Tenant, of the Second part,

Witnesseth: That the Landlord does hereby demise and let unto the Tenant its certain eighty inch Webb Steam lever cotton compress, together with warehouses, sheds, platforms, and its interest in railroad tracks attached thereto, and the real estate upon which said compress warehouse, sheds, platforms, and railroad tracks stand, situated in Shawnee, Pottawatomie County, Oklahoma, as per sketch, attached hereto.

The terms of this lease shall be five years from the first day of September, 1905, and the said Landlord does hereby also demise and let unto the said Tenant, all and singular, the tools, implements, trucks, and all other mechanical devices, machinery, and personal property used in the operation of said compress.

The said Tenant agrees and obligates itself to pay an annual rental of six thousand dollars ($6000.00) for all of the property covered by the lease, payments to be made in installments of five hundred dollars ($500.00) each, on the first day of each and every month, beginning with October first, 1905, under the following conditions, to wit:

1. The landlord shall deliver to the Tenant its Compress property in good operating condition, that is, with the necessary running repairs made for the operation of the press for the season 1905-06.

32 2. It is understood that as soon as the property covered by this lease is turned over to the Tenant, a list of all the personal property referred to above used in operating said compress and embraced in this lease, will have been prepared, and the Tenant will execute to the Landlord a receipt for the said property embraced in said list, and the said list shall constitute a part of this lease for a more perfect description of the property embraced thereby.

3. The Tenant is to pay all expenses of operating the property and maintaining same, by making necessary renewals or repairs, during the term of this lease, returning the property to the Landlord, at its expiration in as good physical condition as when it was received by the Tenant, ordinary wear and tear and damage, by fire, flood, or other providential causes excepted. The Landlord is to pay fire insurance, taxes and assessments on the property during the term of this lease. Boiler insurance to be carried by the Tenant.

4. In case of such damage to the property by fire, flood, or other providential causes as to make its operation impracticable, rent shall

abate until its restoration by the Landlord. If damage do not exceed an estimate of one thousand dollars, ($1000.00) for repairs, or renewals, the Tenant shall have the right to immediately repair or reconstruct the property and recover the cost thereof, from the Landlord.

It is understood that no abatement of rent shall be made for the stoppage of operation of any of the said property, caused by breakdown of machinery, or appurtenances connected therewith, unless such breakdown should be caused directly by fire, flood or other providential causes.

5. The Tenant shall have the right to remove at its own expense, all mechanical devices, machinery, or other fixtures, which it may place upon the property or attach to the press of the Land-
33 lord, provided such removal can be made without injury to the property or press.

6. The Landlord shall not, during the term of this lease, without the consent of the Tenant, directly or indirectly engage in the compression of cotton within fifty miles of any plant operated by the Tenant.

7. It is mutually covenanted and agreed, that on or before the fifteenth day of September, 1905, each party hereto shall appoint an appraiser, and the two so appointed, in case of their failure to agree upon a report of their proceedings, as hereinafter provided, shall appoint an umpire, who shall be an individual having experience in and knowledge of the value of compress property, and the arbitration board so constituted shall proceed to make an inventory and appraisement of the value and condition of the said demised premises, including the cotton compress thereon, buildings, warehouses, sheds, platforms, equipment, machinery, tools, and movable property of every kind, and shall report the same within thirty days after the date of their appointment and such inventory and appraisement shall thereafter be binding as between the parties hereto and shall be conclusive evidence of the condition and character and value of the said premises, and of the standard to which the Tenant has covenanted to maintain and return to the Landlord the said demised property, as hereinbefore provided; and that annually thereafter, and within thirty days after the first day of September, should the Landlord so elect, a similar inspection and appraisement shall be made by a board of appraisers, appointed as herein provided, and such board of appraisers shall, within thirty days after the date of their respective appointments, ascertain and report whether said demised property is in as good condition in all respects as when the said inventory and first appraisement were made, and whether the Tenant has fully complied with its
34 said covenants to maintain same; and in the event that the said report of any such board of appraisers or a majority of them, shall be that the tenant has not fully complied with its said covenants, then the Tenant shall, within sixty days, after the date of said report, make the renewals and repairs specified in said report, as necessary, or, in default thereof, the Tenant shall be deemed to have broken its said covenant. The expense of said

several appraisements, as hereinbefore specified, shall be borne by and equally divided between the parties hereto.

8. In order to secure the payments of the rents herein, agreed to be paid by the Tenant, and to secure the faithful performance on the Tenant's part of all the terms, covenants, and conditions, assumed and imposed upon it by this lease, the Tenant agrees and obligates itself, on or before the first day of September, 1905, to execute to the landlord a bond in the sum of ten thousand dollars, ($10,000.00) with good and sufficient surety or sureties thereon, satisfactory to the Landlord to protect the Landlord in the payments of the rent for the first year, also to secure the Landlord in the faithful performance by the Tenant during the first year of all the covenants, terms and conditions of the lease to be performed by it. And the Tenant further agrees, on or before the fifteenth day of August of each successive year during the term of this lease to execute a like bond to the Landlord for the same purpose for which the first bond is executed; and it is understood that, if the Tenant should fail, after the fifteenth of August of any year to execute one of these bonds, then such failure shall constitute a ground of forfeiture of this lease to the Landlord at his election, and the Landlord shall have the right to re-enter upon the demised property as of its original estate, without notice to the tenant, and to hold all of the said demised property just as if this lease had never been made.

35 It is further covenanted and agreed between the parties hereto, as a part of the consideration of this lease, that, inas much as the Landlord is not the owner of the land on which its press is located, the said Landlord will pay all rents and other charges to the owner of said land which may be due or become due, and shall maintain and continue the Tenant in peaceable possession of said compress during the life of this lease, and on its failure to do so, the rent agreed upon herein, shall abate, and the Landlord shall pay to the Tenant all of its expenses incurred by reason of such failure.

10. It is expressly stipulated that the Landlord will do all that it reasonably can, to make the operation of the Compress in the hands of its tenant a success; that the enterprise shall be managed on sound business principles, and in such manner as will tend to co-operate with the shippers, merchants and others at interest, in building up and maintaining the cotton market at Shawnee. "The Landlord agrees and pledges the Tenant its good-will, moral and real support, and that it, individually and collectively, will render the Tenant every assistance in discouraging unreasonable and unnecessary competition, the purpose of both Landlord and Tenant being to increase the business of a Compress at Shawnee, as well as that of the planting and commercial community. The Tenant further agrees to in no way use its other compresses to the detriment of the Shawnee Compress or the Shawnee cotton market during the term of this lease."

11. It is further understood and agreed between the parties hereto, that should there be any dispute or misunderstanding as to the

meaning or intention of this agreement, which they cannot amicably settle or adjust between themselves, the matter shall be referred to arbitration in the usual way.

36 12. If at any time the Tenant shall make default in the payment of the rent herein, reserved, and such default shall continue for a period of thirty days after any installment of such rent shall become due and payable, and if at any time the Tenant shall make default in the performance of any of its covenants herein contained, then and in such event it shall be lawful for the Landlord its successors or assigns to re-enter upon all and every of the demised property, together with all improvements and betterments in the nature of fixtures, if any made thereon by the Tenant, and therefrom to remove all persons and resume possession and enjoyment of all of the said property which under this agreement shall have passed to the Tenant, and to operate same as a cotton compress as freely as though this lease had never been made, and after all necessary outlays therefor, and for the maintenance of said cotton compress, to retain the proceeds of such operation and to apply the same upon the rentals herein reserved, and to hold the Tenant, its successors and assigns, bound for any deficiency therein, or, at its election, the Landlord may declare this agreement to be ended, and all rights of the Tenant to be determined, without prejudice to any cause of action which the landlord may have against the Tenant for damage for breach of its covenants in this agreement.

13. It is further covenanted that, at the expiration of said term, August 31st, 1910, the said Tenant shall and will yield up and surrender possession of said premises, with the appurtenances, unto the Landlord, its successors or assigns in the same condition as shown by the first report of appraisers hereinbefore provided for, ordinary wear and tear and action by the elements excepted.

In witness whereof, the Landlord has caused these presents to be executed in its name and under its corporate seal by its President and Secretary, and the tenant has caused these presents to be executed in its name and under its corporate seal by its President and

37 Secretary, the day and year first above written, all being done in triplicate.

SHAWNEE COMPRESS COMPANY,
By T. F. STUBBS, *President.*
Attest: W. H. BEATTY, *Secretary.*

In presence of
C. J. BENSON.
J. W. WOODS.

GULF COMPRESS COMPANY,
By C. C. HANSON, *President.*
Attest:
R. E. L. MARTIN, *Secretary.*

In presence of
J. G. SULIVAN,
J. H. MAXEY, JR.

38 EXHIBIT "G."

Protest.

To the pretended Board of Directors of the Shawnee Compress Company and the other officers thereof:

You are hereby notified that I, as one of the members of the said pretended Board of Directors of the Shawnee Compress Company, hereby object and protest against said pretended Board taking any action upon the matter now proposed, to wit: Motion to approve minutes of Directors meetings Apr. 24 and 25/05, or upon any other matter or propositions whatever, for the following reasons, to wit:

First. The pretended members of said Board have never been legally elected or chosen, and, consequently, have no legal power or authority to act as such Board.

Second. Under the Articles of Incorporation, and the by-laws of said Company, the Board of Directors thereof have no legal authority or power to act on the matter now proposed.

Third. The parties now claiming the right and assuming to act as members of the Board of Directors of the said Shawnee Compress Company have no legal power or authority whatever, so to do.

F. E. ANDERSON.

39 EXHIBIT "H."

SHAWNEE, OKLAHOMA, *May 1st*, 1905.

Minutes of Meeting of the Board of Directors of the Shawnee Compress Company.

Pursuant to the call of the President dated 26th day of April, 1905, a meeting of the Board of Directors of the Shawnee Compress Company was held at the office of the Shawnee Compress Company, this 1st day of May, 1905, at 4 o'clock P. M.

Present were T. F. Stubbs, President, presiding, and W. H. Beatty, Secretary, and F. E. Anderson, members of the Board of Directors.

Notice of the said meeting with proof of mailing to the said members of the said Board was filed.

Minutes of directors' meeting of April 24th, 1905, and of April 26th, 1905, were read and approved by a vote of the majority of the Board, W. H. Beatty and T. F. Stubbs voting aye, and F. E. Anderson voting nay. Said F. E. Anderson filed a written protest.

It was moved by W. H. Beatty, and seconded by T. F. Stubbs, that the further matters to come before the Board be presented in form of resolutions in writing. Said motion was carried, all the directors voting aye.

Upon motion of Mr. W. H. Beatty, seconded by T. F. Stubbs, the following resolution was read and adopted:

"Whereas, the stockholders at a special meeting duly called, held on the 24th day of April, 1905, by motion selected a committee composed of C. J. Benson, W. H. Beatty, and F. E. Anderson and directed the said committee to confer with the Gulf Compress Company, and authorized the said committee to enter into a lease with the said Gulf Compress Company, for the lease of the plant
40 and property of the said Shawnee Compress Company for a period of five years for such monthly rentals as they could obtain, and that unless a greater sum could be obtained from the Gulf Compress Company to accept the offer of the said Gulf Compress Company, and lease the same for the term of five years at the rental of six thousand dollars per year, as per the offer and terms then submitted in writing by the said Gulf Compress Company, and

Whereas, the Board of Directors and the officers of the said corporation were directed at such stockholders' meeting to make some suitable arrangement to take up, renew and extend the time of payment, of the indebtedness then outstanding and particularly to take up, renew and extend the indebtedness due the Shawnee National Bank, aggregating about six thousand dollars, and at a rate of interest not exceeding eight per cent. per annum, and

Whereas, the said committee, after negotiating with the said Gulf Compress Company, has been unable to procure a greater rental than the said sum of five hundred dollars per month for five years, and in compliance with the authority and instructions given by such stockholders, has accepted the proposition made by the said Gulf Compress Company to lease the said plant of the said Shawnee Compress Company, for a period of five years at an annual rental of six thousand dollars, payable in monthly installments of five hundred dollars, each, and,

Whereas, said officers have been able to procure the taking up of the said indebtedness to the Shawnee National Bank, as aforesaid by the Gulf Compress Company at an annual rate of interest of eight per cent. to be secured by a second mortgage upon the said property, and plant of the Shawnee Compress Company,

Now, therefore, we, the Board of Directors of the Shawnee Compress Company, hereby resolve, that the action of the said committee in leasing the said plant to the said Gulf Compress Company
41 for the period of five years at the annual rental of six thousand dollars, payable in monthly installments of five hundred dollars, each, the lease to commence September 1st, 1905, the first payment to be made in October 1st, 1905, and the first of each month, thereafter, be and the same hereby is ratified, approved and in all respects confirmed, and the President and Secretary of the said Shawnee Compress Company are hereby directed to execute a lease of the said plant to the said Gulf Compress Company, for the period of five years, at an annual rental of six thousand dollars, payable monthly in five hundred dollar installments, as per the form herewith exhibited or in such other form as the said President and Secretary may cause to be executed to carry out the contract hereinbefore in substance stated and,

Be it further resolved that the said president and Secretary be and

they are hereby authorized to execute the note of the Shawnee Compress Company, to the said Gulf Compress Company for the principal sum of six thousand dollars, payable to the order of the said Gulf Compress Company, at Memphis, Tenn. Twelve months from the date of the same, with interest at the rate of eight per cent. per annum, and to execute in due and lawful form as security, for the payment of the said note a second mortgage on all of the property of the said Shawnee Compress Company, with such terms and conditions as may be required or demanded by the said Gulf Compress Company, to insure the payment of the said note upon its maturity, and

Be it further resolved that the said officers be and they are hereby directed to procure an extension of the indebtedness due the Webb press Company."

The said resolution was adopted; voting in favor of its adoption, W. H. Beatty, and T. F. Stubbs, F. E. Anderson present, not voting.

There being no further business, on motion the meeting adjourned.

42 —— ——, *President.*

Attest: —— ——, *Secretary.*

Endorsed: No. 2902. District Court of Pottawatomie County, Okla. Neil P. Anderson *et al.*, plaintiff-, *vs.* Shawnee Compress Co. *et al.*, defendants. Petition. Filed in District Court of Pottawatomie County, O. T., May 2, 1905. B. D. Shear, Clerk. By C. A. Stamber, Deputy. Shartel, Keaton & Wells, Oklahoma City, Okla., attorneys for plaintiffs.

43 That thereafter, on the same date, J. R. Keaton, one of the attorneys for plaintiffs, made affidavit showing the absence of the judge of the District Court of said Pottawatomie County therefrom, which said affidavit, together with the endorsements thereon, is in the words and figures following, to wit:

44 TERRITORY OF OKLAHOMA, *County of Pottawatomie, ss:*

In the District Court.

NEIL P. ANDERSON ET AL.,
vs.
THE SHAWNEE COMPRESS COMPANY ET AL.

Affidavit Showing the Absence of the District Judge from the County.

J. R. Keaton, of lawful age, being first duly sworn, says that he is one of the attorneys for the plaintiffs in the above entitled action, and that he knows of his own personal knowledge, that the Hon. B. F. Burwell, Judge of the District Court, of said County, is absent therefrom.

J. R. KEATON.

Subscribed and sworn to in my presence, this 2 day of May, 1905.
B. D. SHEAR, *Clerk,*
By C. A. STAUBER, *Deputy.*

Endorsed: 2902. Filed in the district court, Pottawatomie County, O. T., May 2, 1905. B. D. Shear, Clerk, by C. A. Stauber, Deputy.

45 Thereafter, and on the same date, said petition and said affidavit were presented to the Probate Judge of said Pottawatomie County, and he granted a temporary injunction thereon, which said order, together with the endorsements thereon, is in the words and figures following, to wit:

46 TERRITORY OF OKLAHOMA, *County of Pottawatomie, ss:*

In the District Court.

No. —.

NEIL P. ANDERSON ET AL.
vs.
SHAWNEE COMPRESS COMPANY ET AL.

Order Granting Temporary Injunction.

Now on this 2nd day of May, 1905, upon it being made to appear to me, the undersigned Judge of the Probate Court, that the Hon. B. F. Burwell, Judge of the District Court of said County, is absent therefrom, by the affidavit of J. R. Keaton, one of the attorneys for the above named plaintiff, and it being further made to appear to me by the petition of said plaintiff, and the affidavit of Neil P. Anderson and F. E. Anderson, stating that the matters and things contained in the petition are true, that said plaintiffs are entitled to a temporary injunction against defendants, T. F. Stubbs, as president of the Shawnee Compress Company, and defendant W. H. Beatty, as secretary thereof, enjoining and restraining said Stubbs and Beatty from executing or taking any steps whatever, for the purpose of executing on behalf of said Shawnee Compress Co., any lease or lease contract with, defendant Gulf Compress Co.

It is therefore considered, ordered and adjudged by me, as such Probate Judge of said Pottawatomie County, that said defendants, T. F. Stubbs, and W. H. Beatty, as President and Secretary of said Shawnee Compress Co., respectively, be and they are hereby enjoined from executing, on behalf of said Shawnee Compress Co., any lease or lease contract whatever to the said Gulf Compress Co., and also from taking any further steps of any kind or character, looking to the or for the purpose of leasing the plant or other property of the said Shawnee Compress Co. to said Gulf Compress Co., and also from turning any of the property of the said Shawnee Compress
47 Co. over to the said Gulf Compress Co. until the final determination of the said above entitled action or the further order

of the District Court of said Pottawatomie County or the Judge thereof.

It is further ordered that this order of injunction shall not be operative until there shall have been given on behalf of said plaintiffs an undertaking executed by one or more sufficient sureties in the sum of $1000.00 to be approved by the clerk of said District Court.

W. N. MAYBEN,
Probate Judge.

Endorsed: No. 2902. Neil P. Anderson *vs.* Shawnee Compress Company. Order of Injunction. Filed in the District Court, Pottawatomie County, O. T., May 2, 1905. B. D. Shear, Clerk. By C. A. Stauber, Deputy.

Thereafter, and on the same date, the bond provided for in said order granting a temporary injunction, was given by said plaintiffs, with good and sufficient surety, and duly approved by the clerk of said court.

Thereafter, and on the 13th day of May, 1905, said plaintiffs, in compliance with the order of the District Court, of that date, executed an additional bond to defendants, in the sum on $8000. with E. H. Cooke and J. L. Wilkin as sureties thereon, which said additional bond was, on the — day of May, 1905, duly approved by the Clerk of said District Court.

48 Thereafter, and on May 13th, 1905, plaintiffs, by leave of court, filed in said cause their amended petition, which, together with the endorsements thereon, is in the words and figures following to wit:

49 TERRITORY OF OKLAHOMA, *Pottawatomie County, ss:*

In the District Court.

NEIL P. ANDERSON, B. L. ANDERSON, and MORRIS E. BURNEY, Co-partners as Neil P. Anderson & Company, F. E. ANDERSON, M. D. ANDERSON, and W. L. CLAYTON, Co-partners as Anderson, Clayton & Company, Plaintiffs,

vs.

SHAWNEE COMPRESS COMPANY, a Corporation; GULF COMPRESS COMPANY, a Corporation; T. F. STUBBS, W. H. BEATTY, C. C. HANSON, and R. E. L. MARTIN, and J. M. AYDELOTTE, Defendants.

Amended Petition.

Come now the plaintiffs above named, and, by leave of Court, first had and obtained, file this, their amended petition, and for cause of action, against defendants, allege:

1. That plaintiffs, Neil P. Anderson, B. L. Anderson, and Morris E. Burney are co-partners and constitute the firm of Neil P. Anderson

& Company, which said firm owns sixty nine shares of One hundred Dollars each of the capital stock of the Shawnee Compress Company, and that plaintiffs, F. E. Anderson, M. D. Anderson, and W. L. Clayton, are co-partners and constitute the firm of Anderson, Clayton & Company, which said firm owns sixty-four shares of One hundred Dollars each of the capital stock of the said Shawnee Compress Company.

2. That defendant, Shawnee Compress Company, is a corporation duly and legally organized under the laws of the Territory of Oklahoma, with a capital stock of Fifty Thousand Dollars, divided into shares of One Hundred dollars each, all of which said capital
50 stock has been subscribed and issued; that defendant, T. E. Stubbs, claims to be President of said Shawnee Compress Company, and assumes to act as such, and defendant, W. H. Beatty, claims to be Secretary of said Company, and assumes to act as such; that defendant, J. M. Aydelotte, claimed to be President of said Company, and assumed to act as such for several years prior to April 24, 1905; that defendant, Gulf Compress Company, is a corporation created and existing under the laws of the State of Alabama, and defendant, C. C. Hanson, claims to be President thereof, and assumes to act as such, and defendant, R. E. L. Martin, claims to be and assumes to act as Secretary thereof.

3. That some time prior to April 13, 1905, certain of the stockholders, acting as and claiming to be officers of the said Shawnee Compress Company, without any legal cause or excuse therefor, conceived the idea of leasing the entire property, and business of said Company together with its good will and the right to operate the business thereof, to said defendant, Gulf Compress Company, a foreign corporation, and on said 13th day of April, 1905, said defendant, J. M. Aydelotte, assuming to act as President of the said Shawnee Compress Company, sent to the firm of Neil P. Anderson & Co. and Anderson, Clayton & Company, a notice that there would be a meeting of the stockholders of said Company held at its office in Shawnee, on April 24, 1905, at 11 o'clock, A. M. A true and complete copy of one of which said notices is hereto attached, made a part hereof, and marked "Exhibit A" of this petition.

That at said pretended meeting of stockholders held on said 24th day of April, 1905, certain of the stockholders of said Company representing or assuming to represent a majority of the stock of said Company, over the protest and objection of these plaintiffs, and without any legal cause or excuse therefor, passed a motion to accept a certain proposition made by the said Gulf Com-
51 press company, of Memphis, and authorized and directed the appointment of a certain committee of three and consisting of F. E. Anderson, C. J. Benson, and W. H. Beatty, to accept said proposition and negotiate a lease to the said Gulf Compress Company, of the entire property and business of said former company, for a period of five years, for Six Thousand Dollars per annum. The said stockholders claiming and assuming to represent a majority of the stock of said Company, also passed a certain

resolutions, pretending to amend the by-laws of said Company, and to elect a board of directors therefor, consisting of three members, to wit: T. F. Stubbs, F. E. Anderson, and W. H. Beatty, and the minutes of said meeting kept by the said W. H. Beatty, acting as Secretary thereof, contain the following false statement, to wit: "Elected by ballot, by unanimous vote of the Stockholders present," there having been, in fact, no vote taken by ballot upon any proposition, and the said F. E. Anderson and B. L. Anderson, not voting the stock represented by them, either one way or the other, on the pretended resolutions amending the by-laws and electing a board of directors consisting of only three members. A full and correct copy of the proceedings had at said meeting, as shown by the minutes, kept by said Secretary, and which minutes are substantially correct, except as hereinbefore stated, is hereto attached, and made a part hereof, and marked Exhibit "B."

That immediately following the adjournment of said pretended Stockholders' meeting of the said Shawnee Compress Company, a pretended meeting of the said three directors, designated and chosen by said pretended resolution of said stockholders, was held and assumed, and pretended to elect the following officers, to wit: T. F. Stubbs, President, F. E. Anderson, Vive President, W. H. Beatty, Secretary, a copy of the minutes of said pretended meeting of said parties claiming and assuming to act as directors,
52 being hereto attached, and made a part hereof, and marked Exhibit "C."

That thereafter, and on the 25th day of April, 1905, said T. F. Stubbs, and W. H. Beatty, assuming to act as President and Secretary respectively of said Shawnee Compress Company, wired plaintiff F. E. Anderson, to the effect that a meeting of said pretended board of directors would be held in the City of Shawnee, on April, 26, 1905, at 4 o'clock, P. M., and, as plaintiffs are informed, and believe, a pretended meeting of said Board was held at said time, at which the said Stubbs and Beatty were the only parties present, and they assumed to take certain proceedings as shown by the minutes of said meeting, kept by the said Beatty, a true and complete copy of which said minutes is hereto attached, made a part hereof, and marked Exhibit "D."

That thereafter and on said April 26, 1905, the said Stubbs and Beatty, assuming to act as President and Secretary of said Company, respectively sent to plaintiff, F. E. Anderson, a notice stating that a meeting of said pretended board of directors would be held at the office of the Company in the City of Shawnee, on the 1st day of May, 1905 at the hour of 4 o'clock P. M., a true and complete copy of which said notice being hereto attached, made a part hereof, and marked Exhibit "E."

That on said 26th day of April, 1905, the said F. E. Stubbs, and W. H. Beatty, as President and Secretary of said Shawnee Compress Company, respectively, assumed to execute a written lease to said defendant, Gulf Compress Company, on behalf of said Shawnee Compress Company, a true and complete copy of which said

lease being hereto attached, made a part hereof, and marked Exhibit "F."

That thereafter and on the said first day of May, 1905, a meeting of said pretended board of directors was held at the office of said Company, in the City of Shawnee, which said meeting was attended by said T. F. Stubbs, F. E. Anderson, and W. H.
53 Beatty, and the first proposition coming before pretended board of directors was the approval of the minutes of the meeting of April 24 and 26, 1905, whereupon the said F. E. Anderson, filed a written protest and objection to said pretended board taking any action on said matter or upon any other matter. A true and complete copy of which said protest is hereto attached, made a part hereof, and marked Exhibit "G."

That said Beatty and Stubbs, claiming and assuming to act as members of said board of directors, over the said objection and protest of said plaintiff, took certain other proceedings relative to the pretended leasing of the entire property and business of the said Shawnee Compress Company, to the said Gulf Compress Company, which said pretended proceedings are shown by the minutes of said meeting of May 1, 1905, a true and complete copy of which is hereto attached, made a part hereof, and marked Exhibit "H."

That as shown by the copies hereinbefore set out, none of the said pretended notices, so given by the pretended officers of said Shawnee Compress Company, either of the said stockholders' meeting- or of any of the directors' meetings, stated the purpose for which such meeting was called, or any of the business which would probably come before same, and all of said pretended meetings were special or called, meetings.

4. Plaintiffs further allege that the purpose of said Stubbs and Beatty and of certain of the other stockholders who joined with them in the efforts to procure the negotiation of said lease, to the Gulf Compress Company, was not that the interests of said Shawnee Compress Company would probably be advanced thereby, but for certain advantages which they believed would accrue to themselves; that said Beatty and Stubbs are insolvent, or practically so, and are largely indebted to the Shawnee National Bank of the City of Shawnee, said County and Territory, and had hypothecated with said bank all of the stock owned by them in said Compress
54 Company at and prior to the said stockholders' meeting of April 24, 1905, as collateral security for sums owned by them, to said Bank, and said Bank was, and had been, pressing them for the payment of their said indebtedness, which they were unable to do; and your petitioners allege that one of the objects (if not the principal object) of the said Beatty and Stubbs in procuring the execution of said pretended lease to said defendant, Gulf Compress Company, was to induce the said Gulf Compress Company to advance them certain moneys to pay a portion, if not all, of their said indebtedness to said Shawnee National Bank, and to carry said loan or assist them in procuring the said Bank, or some other person, to carry same, and therefore, your petitioners

charge that the said motive of said Beatty and Stubbs in making the said lease was, to further their own interest at the expense of the interests of the said Shawnee Compress Company.

Plaintiffs further state that at the said pretended stockholders' meeting of April 24, 1905, the said W. H. Beatty and T. F. Stubbs each assumed to represent and voted in favor of the said proposition to negotiate said pretended lease to said Gulf Compress Company, one hundred thirty-three (133) shares, making the total shares represented by them of two hundred sixty-six (266) whereas, they had only owned, prior to the date of said meeting, a total of one hundred thirty-three (133) shares, but pretended at said meeting, to have purchased of one A. E. Nelson the additional one hundred thirty-three (133) shares on or just prior to the date of said stockholders meeting, whereas, your petitioners are informed and verily believe, that at the time of said meeting neither the said Beatty nor the said Stubbs owned the said one hundred thirty three (133) shares previously owned and represented by the said A. E. Nelson, but if they did have any interest therein, such interest was procured by the said Beatty and Stubbs, or one of them, after they had
55 secretly negotiated an agreement with certain of the officers of said Gulf Compress Company to execute said pretended lease contract, and for the sole purpose of enabling them, together with certain other owners of small portion of the stock of said Shawnee Compress Company, to represent a majority of the stock of said Company, at said pretended meeting, and thereby enabled to consummate the said fraudulent and illegal lease contract with said Gulf Compress Company.

Plaintiffs further allege, that the exigencies of the business of the said Shawnee Compress Company did not demand or justify the said pretended officers thereof in making the said pretended lease, with the said Gulf Compress Company, or with any one else, as the net earnings of said former Company for the season last past (1904-1905) were, as shown by the statement of the secretary and Treasurer thereof, the sum of seven thousand four hundred eighty five, and 89/100 ($7485.89) Dollars, and this over and above taxes and insurance, and, notwithstanding the fact that the affairs of said Shawnee Compress Company were very negligently and incompetently managed by those in charge thereof, and these plaintiffs verily believe and therefore, allege, that, with proper management, said plant can be made to earn as large, if not larger, net amount, for each of the years covered by said pretended lease to said Gulf Compress Company.

5. Plaintiffs further allege that said defendant, Gulf Compress Company, is a foreign corporation, organized and existing under the laws of some other state or Territory, than the Territory of Oklahoma and that it is, and has been for some years last past, engaged in the business of leasing and operating competing presses for the purpose of monopolizing, as far as possible, the business of compressing cotton in a large portion, if not all, of the Territory comprised in the cotton raising districts of the United States, and that said pretended lease, which the said Beatty and Stubbs attempted to

negotiate to the said Gulf Compress Company, was procured
56 on the part of certain of the officers of said Company in furtherance of the said scheme on the part of said officers to further restrict competition in the compressing business and to monopolize same, the said Company having already leased the Compresses at Oklahoma City, O. T., and at South McAlester, I. T., and these plaintiffs are informed and verily believe, either have leased or are attempting to negotiate a lease for the Compress at Muskogee, I. T., that said Gulf Compress Company is, in its operation and method of conducting business, a trust, combination and conspiracy in restraint of trade and commerce in violation of the Federal Anti-trust law, and the Anti-trust law of the Territory of Oklahoma, and your petitioners are further informed and verily believe that it is the purpose and design of said Gulf Compress Company, to charge its customers for the compressing of cotton, in addition, to the ordinary charges for such compressing a sum aggregating about ten cents per bale, and by doing so it will entail a loss upon the purchasers of cotton equal to said extra charges, and that it will be enabled to enforce said charges by reason of the fact that it will control all of the compresses in the Territory, to which said cotton would naturally be shipped for compression.

Your petitioners further represent that they do not know whether or not the charter or articles of incorporation of the said Gulf Compress Company authorize it to make or enter into the pretended lease contract hereinbefore set out, nor whether or not the stockholders or directors of said Gulf Compress Company have ever legally authorized it to enter into such contract, nor whether or not the said Gulf Compress Company has complied with the laws of the Territory of Oklahoma, regulating foreign corporations doing business in said Territory, and therefore, demand strict proof on behalf of said defendant of such facts.

6. These plaintiffs further allege, that all of the proceed-
57 ings at said pretended stockholders' meeting, of the said Shawnee Compress Company, held on April 24, 1905, and the said directors' meetings held respectively on April 24, 26th and May 1, 1905, relating to and pretending to authorize the leasing of the said property and business, good-will, etc., of the said Shawnee Compress Company, are wholly illegal and beyond the legal powers and authority of the said stockholders and directors of said corporation. That the purposes for which said corporation was organized, are to construct and operate a cotton compress in the said city of Shawnee, County of Pottawatomie, Territory of Oklahoma, for the purpose of receiving, compressing, weighing, storing, buying, handling selling and ginning cotton, and the stockholders and officers of said corporation are not authorized to execute a lease for a period of years vesting in another and foreign corporation, the rights, duties, and business of said Company.

That the said pretended Board of directors which were attempted to be selected and chosen, at the said pretended meeting of the stockholders on April 24, 1905, were never legally elected, and have no legal power or authority to represent the said Shawnee Compress

Company, as its Board of directors under the articles if incorporation and by-laws of said Company, and that the said parties so claiming to be the members of the Board of directors of said Company, and assuming to act therefor, have no legal power or authority to bind said Company to the said pretended contract of lease, and the said contract of lease is void, as against the rights of these plaintiffs, being minority stockholders of the said Shawnee Compress Company.

Wherefore these plaintiffs pray, that said pretended lease contract be declared null and void, and that same be cancelled, and set aside, and that a decree be entered, upon final hearing, enjoining the said T. F. Stubbs and W. H. Beatty assuming to act as
58 President and Secretary of said Company, respectively from executing or taking any further proceedings of any kind whatever, looking to the execution of a lease of the property, business, etc., of the said Shawnee Compress Company, to the said Gulf Compress Company, and from delivering any of the property of the said Shawnee Compress Company to the Gulf Compress Company, and for all other just and equitable relief, together with the recovery of the costs of this action, including a reasonable attorney's fee, to be taxed as a part of such costs; that in the meantime, a temporary injunction be granted against said Stubbs and Beatty, as such officers, restraining them from doing any of the things hereinbefore specified.

SHARTEL, KEATON & WELLS,
Attorneys for Plaintiffs.

TERRITORY OF OKLAHOMA, *County of Pottawatomie, ss:*

Comes now Neil P. Anderson, and F. E. Anderson, who being first duly sworn on oath say; that they are two of the plaintiffs in the above entitled action, and are members respectively, of the firms of Neil P. Anderson & Co. and Anderson, Clayton & Company; that they have read the above and foregoing amended petition, and that the matters and things stated therein, are true.

NEIL P. ANDERSON,
F. E. ANDERSON.

Subscribed and sworn to before me, this 13th day of May, 1905.

B. D. SHEAR,
Clerk Dist. Court,
[SEAL.] By C. A. STAUBER, *Deputy.*

Endorsed: 2902. Neil P. Anderson *et al.*, plaintiffs, *vs.* Shawnee Compress Company, corporation *et al.*, defendants, Amended petition. Filed in District Court Pottawatomie County, O. T. May 13, 1905, B. D. Shear, Clerk, By C. A. Stauber, Deputy. Shartel,
59 Keaton & Wells, Att'ys for Pl'ffs.

Thereafter, and on the same date, defendants filed in said cause their demurrer to said amended petition, which, together with the endorsements thereon, is in the words and figures following, to wit:

60 TERRITORY OF OKLAHOMA, *Pottawatomie County.*

In the District Court in and for the said County and Territory.

NEIL P. ANDERSON ET AL., Plaintiffs,
vs.
THE SHAWNEE COMPRESS CO. ET AL., Defendants.

Demurrer.

Comes now the Shawnee Compress Company, T. F. Stubbs, W. H. Beatty and J. M. Aydelotte, defendants in the above entitled action, and demur to the amended petition of the plaintiffs filed herein, upon the grounds and for the reasons following, to wit:

1st. That there is a defect of parties plaintiff.

2nd. That there is a defect of parties defendant.

3rd. That there is a misjoinder of causes of actions.

4th. That the said amended petition does not state facts sufficient to constitute a cause of action.

5th. That paragraph No. 24th does not state facts sufficient to constitute a cause of action, or entitle the plaintiffs to any relief.

6th. That paragraph No. 5th does not state facts sufficient to constitute a cause of action or entitle plaintiffs to any relief.

7th. That paragraph No. 6th does not state facts sufficient to constitute a cause of action, or to entitle plaintiffs to any relief.

J. H. WOODS &
BLAKENEY & MAXEY,
Att'ys for Shawnee Compress Company.
W. H. BEATTY,
T. F. STUBBS, AND
J. M. AYDELOTTE,
Defendants, and Gulf Compress Company.

Endorsed: No. 2902. N. P. Anderson *vs.* Shawnee Compress Co. Demurrer to amended petition. Filed May 13, 1905. B. D. Shear, Clerk.

61 Thereafter, and on the 27th day of May, 1905, the demurrer of said defendants came on for hearing and was argued and submitted to the court and was, thereupon overruled, which said order overruling said demurrer, is in words and figures following, to wit:

62 TERRITORY OF OKLAHOMA, *County of Pottawatomie, ss:*

In the District Court.

NEIL P. ANDERSON ET AL., Plaintiffs,
vs.
SHAWNEE COMPRESS CO. ET AL., Defendants.

Order Overruling Demurrer.

Now on this 27th day of May, 1905, this cause came on to be heard on the demurrer of the defendant- to the petition herein;

The plaintiff- and defendant- being present by their attorneys, and said demurrer being presented and the Court being fully advised in the premises, finds that said demurrer should be overruled;

It is hereby therefore, ordered that the demurrer herein be, and the same is overruled; whereupon the defendant- excepts to the ruling of Court.

—— ——, *Judge.*

63 And thereafter, and on the same date, defendants filed in said cause their answer to plaintiffs' amended petition, which said answer, together with the endorsements thereon, is in the words and figures following, to wit:

64 TERRITORY OF OKLAHOMA, *County of Pottawatomie.*

In the District Court in and for the said County and Territory.

NEIL P. ANDERSON, B. L. ANDERSON, and MORRIS E. BURNEY, Co-partners as Neil P. Anderson & Company, and F. E. ANDERSON, M. D. ANDERSON, and W. L. CLAYTON, Co-partners as Anderson, Clayton & Company, Plaintiffs,
vs.
SHAWNEE COMPRESS COMPANY, a Corporation, *et al.*, Defendants.

Answer.

Comes now the Shawnee Compress Company, W. H. Beatty, T. F. Stubbs, and J. M. Aydelotte, and Gulf Compress Company, and C. C. Hanson, for their answer to the plaintiffs' amended petition herein filed, allege and say:

1st. That they deny each, every and all of the allegations, in the said amended petition contained, not hereinafter specifically admitted.

2nd. These answering defendants admit that the Shawnee Compress Company is a corporation duly organized under and by virtue of the laws of the Territory of Oklahoma, with a capital stock of $50,000.00, and that T. F. Stubbs and W. H. Beatty are respectively the President and Secretary of the said corporation, and admit that

the said Gulf Compress Company is a corporation organized under the laws of the State of Alabama.

3rd. These answering defendants further answering the plaintiffs' petition, allege and say, that on the 13th day of April, 1905, J. M. Aydelotte, then President of the Shawnee Compress Company, issued a call for a stockholders meeting of the said corporation to be held at the office of the said company, at Shawnee, on the 24th day of April, 1905, at the hour of eleven o'clock, A. M., and that
65 at the said meeting, all of the owners and holders of the stock of the said corporation except H. T. Douglas, and J. E. Portis were present, and that there were present and participating in the said meeting, the plaintiffs in the said action, Neil P. Anderson & Company, by their duly authorized and acting agent, and partner, B. L. Anderson, and the firm of Anderson, Clayton & Company by their duly authorized and acting agent and partner, F. E. Anderson, and that there were also present O. J. Benson, W. H. Beatty, J. M. Aydelotte, by proxy, and T. F. Stubbs, and that the total number of shares of stock present at the said meeting, was 467½.

4th. These answering defendants allege that at the said time and for more than ten days prior thereto, the said W. H. Beatty was the owner and holder of in his own right 133 shares of the capital stock of the said corporation, and that T. F. Stubbs was the owner and holder in his own right, of 133 shares of the capital stock of the said corporation.

5th. These answering defendants further state that the said Shawnee Compress Company was and had been for more than one year last past, largely indebted to various and divers corporations and persons, to wit: To the Webb Press Company, Ltd., $11,250.00, and to the Shawnee National Bank, $6000.00, and that the said indebtedness to the said Webb Press Company, Ltd., and to the said Shawnee National Bank, was past due since the first day of January 1905, and that each of the said creditors were pressing and demanding the payment of the said indebtedness and threatening that unless the same was paid, that they would proceed to enforce the collection of the same.

6th. These answering defendants further allege that at the said meeting on the 24th day of April, 1905, the said stockholders elected a Board of Directors composed of W. H. Beatty, T. F. Stubbs, and F. E. Anderson, and that each of the said directors accepted
66 the duties imposed as such director, and that they have continued since the said date, to act as directors of the said corporation, and that at the said stockholders' meeting, the said directors were elected unanimously, by vote of all the members present, the said plaintiffs voting for the election of the said directors.

7th. These answering defendants further allege and say, that the said Neil P. Anderson & Company have been the holders of the stock of the said corporation during the past six months, and that the stock of the said Neil P. Anderson & Company has been voted and managed by the said B. L. Anderson, one of the said partners, and that the stock owned by the said Anderson, Clayton & Company, has been owned by them about the same length of time, and that F.

E. Anderson, one of the partners, has acted as the agent of the said Anderson, Clayton & Company continuously since the said firm has held the said stock, and these answering defendants further allege and say that the said B. L. Anderson is the duly authorized agent of the said Neil P. Anderson & Company, a partnership, and that the said F. E. Anderson is the duly authorized and acting agent of the said partnership, Anderson, Clayton & Company, and that they have been such at all the times since the firms have owned and held the said stock.

8th. These answering defendants allege and say, that in order to raise the necessary money to pay the pressing demands of the said creditors, to wit: The Shawnee National Bank, the sum of six thousand dollars, and in order to secure an extension of the time of payment of the indebtedness due to the Webb Press Company, Ltd., the said stockholders at the said meeting instructed the said President and Secretary to make such arrangement for the extension of the time of payment of the said indebtedness and to procure the necessary moneys for the payment of the same, and the said Secretary acting under and by virtue of the said authority, stated to the said
67 stockholders that the same could be obtained from the Gulf Compress Company, provided the Gulf Compress Company could obtain a lease for a period of five years, at the annual rental of six thousand dollars upon the plant and property of the said Shawnee Compress Company, and that after full consideration of the same, in which the plaintiffs participated, the said stockholders appointed a committee composed of C. J. Benson, W. H. Beatty, and F. E. Anderson, and instructed the said committee to make an effort to obtain a higher rental from the said Gulf Compress Company, if same could be so obtained, but if the same could not be obtained directed the said committee to accept the said proposition and authorized the officers of the said corporation to execute the lease to the said Gulf Compress Company, and that pursuant to the authority conferred therein, a meeting of the Board of Directors of the said corporation was called for April 26th, 1905, at which time the said matters were considered, and the said committee reported to the said Board of Directors at the said meeting, and the duly authorized President and Secretary to enter into the said lease on behalf of the Shawnee Compress Company, and that the said F. E. Anderson being absent from the said meeting, the said officers of the said Compress Company called a subsequent meeting and notified the said F. E. Anderson of the same, to be held at the Office of the said Shawnee Compress Company on the first day of May, 1905, at the hour of four o'clock P. M., and sent such notice to the said Anderson who received the same, and in compliance therewith, attended the said meeting, as shown in the minutes attached to the plaintiff's petition and marked "Exhibit H."

9th. These answering defendants further expressly deny that any changes have been made in the minutes of the said corporation, or that the same are in any respect false or untrue, but that the facts and statements recited in the said minutes are true and cor-
68 rect. Except the words "By ballot" is erroneous in the minutes of the stockholders' meeting.

10. These answering defendants further allege that after the said meeting of the Board of Directors, held on May 1st, 1905, at which all of the members of the said Board were present, the said Board of Directors accepted the proposition of the lease tendered by the said Gulf Compress Company, in compliance with the resolutions adopted by the said Board of Directors, and the said President and Secretary executed the said lease and delivered the same to the said Gulf Compress Company.

11th. These answering defendants further allege that the execution of the said lease was necessary in order to procure money by which to pay the indebtedness of the said corporation, and to procure an extension of the time of payment of the indebtedness of the Webb Press Company, Ltd., and that the said lease was in all respects valid, regular and authorized by law, and is now valid and binding upon these answering defendants, and that the consideration therein paid was fair and reasonable and for the best interest of the said stockholders, and all of them, of the said corporation, and defendant could procure said second mortgage money in no other way, and that the property of the Shawnee Compress would have been sold at a great sacrifice unless said lease was made.

12th. These answering defendants for further answer to the plaintiff's petition allege and say that the said Neil P. Anderson & Co., and Anderson, Clayton & Company, are firms of cotton buyers operating within the said Territory, and that the said firms are engaged in the buying and shipment of cotton in the different portions of the Territory of Oklahoma, and that in order that they may oppress other cotton buyers engaged in the buying and shipping of cotton and in order to have and obtain an unfair advantage over other buyers in such business, have conspired together for
69 the purpose of forming a monop-ly of all the compresses in the said Territory, under their management and control, and in order that they may hamper and harass other cotton buyers in the said Territory, and to prevent them from having their cotton compressed and shipped with the rapidity that the said plaintiff may do, by reason of being able to control and manage such compresses, and that the said plaintiffs have conspired together for the purpose of destroying competition in compressing for the purpose of extorting moneys from those who are compelled to have their cotton compressed, preparatory to shipment from the said Territory, have purchased stock in compresses located at Chickasha and Pauls Valley, in the Indian Territory, and El Reno, Snyder, Hobart, and Shawnee, and that the said plaintiffs, for the purpose of carrying out the said conspiracy, have, for more than six months last past endeavored to obtain the majority of the stock of the Shawnee Compress Company, and knowing that the said Beatty & Stubbs, also buyers of cotton engaged in the business of buying and shipping cotton from the said Territory, owned and held the majority of the stock of the said Company, and knowing that the said Beatty and Stubbs were involved and in great need of money, have in all ways, tried to oppress the said Beatty & Stubbs, and compel them to sell and transfer their stock to the said Plaintiffs, and without any sufficient or adequate

consideration, and had conspired together to compel the said Shawnee Compress Company which they knew was largely involved, and whose demands were pressing, to sell and convey its property to them at a wholly inadequate consideration to wit: The sum of $25,000.00, and that the said corporation would be required to meet its pressing demands by either a sale of its property, at said inadequate consideration to the said conspirators, and extortioners, unless the said Compress Company was able to lease its said plant and thereby procure money to pay and meet its said pressing demands, the
70 said Shawnee Compress Company did, for the purpose, and in order to prevent the accomplishment of the said conspiracy of the said plaintiff, and in order to protect its said interests, and its said property, executed the lease as aforestated, and these answering defendants allege that, by reason of the said foul conspiracy of the said Andersons, who, during all of the said time were acting as directors and held the stock of the said corporation, and whose duty it was, to advance the interests of the said corporation, that the said Andersons are not entitled in equity to an injunction restraining these defendants from carrying out the lawful and binding lease executed in the highest good faith, for the best interests of the said corporation, and for its protection against its pressing demands, and indebtedness, and that the said plaintiffs are stopped from claiming that the same is invalid or illegal, or unnecessary, and these answering defendants allege that the indebtedness owing by the said corporation has been pressing because of the illegal action of the said Andersons, and that the extreme necessity of obtaining the said money has been created by the said conspirators, the said plaintiffs, and plaintiff has opposed said lease, and brought this action to carry out said conspiracy, and to prevent same being operated by any one but themselves, that the plaintiffs have, further not come into equity with clean hands.

13th. These answering defendants further allege, that the said plaintiffs have entered into a conspiracy between themselves, that they will oppress and annoy the Gulf Compress Company, and that they will prevent it from carrying on its lawful business within the said Territory, in order that they, the said plaintiffs, may have a monopoly, and have no competition in the compressing business in the Territory, and that for the said purpose are doing and have done all of the acts and things complained of in the said action, for the purpose of preventing the said Gulf Compress Company from leasing the plant of the said Shawnee Compress
71 Company and from engaging in the compressing business in the said Territory, and in the said City of Shawnee, and these answering defendants further allege that the said Gulf Compress Company has leased the plant of the Oklahoma Compress Company, and, that during the last year, operated the same, and that the said plaintiffs, for the purpose of carrying out their said conspiracy, are trying to buy the stock of the said Oklahoma Compress Company, for the purpose of commencing an action there, to harass the said Gulf Compress Company and for the purpose of keeping them from engaging in the business of compressing

cotton within the said Territory, and for the purposes of promoting their private interests, and business, as aforesaid, by preventing competitors buying cotton in the said Territory, from having their cotton compressed by any compress company, which will treat them fairly, and give them an equal chance in the buying and selling of such cotton; these answering defendants further allege, that the said conspiracy of the plaintiffs is contrary to the acts of Congress and of the Territory of Oklahoma, prohibiting trusts, monopolies, and combinations, and that it is inequitable, unjust and oppressive to these defendants, and all of them and to other persons engaging largely in the cotton business, in the said Territory and to persons and corporations desiring to have cotton compressed and that by reason of the same, they ought not to be given any relief in a Court of Equity.

14th. These answering defendants specifically deny that they have in any manner or in any way done any act or any thing which would injure the value of the shares of the stock held by the stockholders of the said corporation, and deny any collusion among any of the stockholders of the Shawnee Compress Company, to injure the plaintiffs, or any of the other stockholders and deny specifically that the Gulf Compress Company is attempting to, or that its acts will in any respect, assist in the formation of
72 a trust, combination, or monopoly, or that any of its acts are in any way illegal, or invalid, but allege that the facts are that the said lease is valid, and that if carried out, it will be beneficial to all of the stockholders and the property of the said corporation at the expiration of the said lease, will be delivered to the said compress Company, free of debt, and the said Compress Company will thereby be permitted to carry on its said business, and engage in the business and enjoy the privileges given and granted by its charter.

15th. These answering defendants further allege, that the said plaintiffs for the purpose aforesaid, of compelling the said Shawnee Compress Company to sell its properties to them at a greatly reduced and inadequate price, have for some time last past, been threatening to place in the said city of Shawnee another and second Compress, and have thereby affected the value of the stock of the said Shawnee Compress Company; that the said business of compressing in the said city of Shawnee, is not sufficient to maintain more than one compress, and that the placing of another compress in the said City would greatly depreciate the value of the stock and portions of the said Shawnee Compress Company, and that the said plaintiffs who are stockholders and directors in the said corporation, and whose duty it is to promote its interests and advance its business, have in all ways annoyed and harassed the officers of the said corporation, and have, at divers times, threatened to place a said second Compress in the said City of Shawnee and have urged the stockholders of the said corporation to sell the plant, of the said corporation, to them at the said inadequate consideration, and have attempted to induce the creditors of the said corporation to compel the sale of its said properties as aforesaid, to them, and that by reason of the said premises, they are not entitled to any relief in equity.

16th. These answering defen-ants further allege and say, that the said plaintiffs by participating in the said meetings of the
73 said stockholders and the said F. E. Anderson by acting as such director of the said corporation, with the consent and assistance of the other said plaintiffs, are estopped from denying that the said meeting was regularly, and formally called and that the directors were not regularly elected, and that the two stockholders absent from the said meeting H. T. Douglass, and J. E. Portis, have signed an agreement in writing, waiving all irregularities and formalities therein, if any, and consenting to and confirming the action of the said Shawnee Compress Company, in the execution of the said lease, and the extension and renewing of the said indebtedness, and election of present directors, and that its said action of its stockholders and directors are in all respects legal and have been by all its stockholders duly and regularly ratified, and are now binding upon said corporation.

Wherefore, the premises considered, these answering defendants pray that the said injunction be dissolved, and that they recover costs and attorneys' fees and for such other relief as the premises justify.

J. H. WOODS &
BLAKENEY & MAXEY,
Attorneys for Answering Def'ts.

TERRITORY OF OKLAHOMA, *County of Pottawatomie, ss:*

W. H. Beatty of lawful age, being first duly sworn, on oath, deposes and says, that he is one of the answering defendants in the above entitled action; that he has read the above and foregoing answer and that the allegation- thereof are true as he verily believes.

W. H. BEATTY.

Subscribed and sworn to before me, this 12th day of May, 1905.

HAL JOHNSON,
[SEAL.] *Notary Public.*

74 My Commission Expires January 28, 1908.

Endorsed: No. 2902. In the District Court of Pott. Co. Neil P. Anderson *et al.* plf., *vs.* The Shawnee Compress Company *et al.*, defendants. Answer of the Compress Co. Filed in District Court, Pottawatomie, County, O. T., May 27, 1905. B. D. Shear, Clerk, By C. A. Stauber, Deputy.
Blakeney & Maxey, & J. H. Woods.

And thereafter, and on the same date, plaintiffs filed in said cause their special demurrer to certain paragraphs of the answer of defendants and motion to strike out said paragraphs, which said special demurrer and motion, together with the endorsements thereon, is in the words and figures following, to-wit:

75 TERRITORY OF OKLAHOMA, *County of Pottawatomie, ss:*

In the District Court.

No. 2902.

NEIL P. ANDERSON ET AL., Plaintiffs,
vs.
SHAWNEE COMPRESS COMPANY ET AL., Defendants.

Special Demurrer to Certain Paragraphs of Answer, and Motion to Strike.

Comes now the plaintiffs in the above entitled cause, and demur to the twelfth and thirteenth paragraphs of the answer of defendants, Shawnee Compress Company, Gulf Compress Company, W. H. Beatty, T. F. Stubbs, and J. M. Aydelotte, for the reason that said paragraphs of said answer and each of them, fail to state facts sufficient to constitute a ground of defense, or partial defense, to the cause of, action alleged in the petition of plaintiffs, and who also move to strike said paragraphs out of said answer.

SHARTEL, KESTON & WELLS,
Attorneys for Plaintiffs.

Endorsed: No. 2902. In the District Court of Pottawatomie County Okla. Neil P. Anderson *et al.*, plaintiffs, *vs.* Shawnee Compress Company *et al.*, defendants. Special demurrer to certain paragraphs of answer and motion to strike. Filed in District Court, Pottawatomie County O. T. May 27, 1905. B. D. Shear, Clerk By C. A. Stauber, Deputy. Shartel, Keaton & Wells, Oklahoma City, Okla. Attorneys for the plaintiffs.

76 And thereafter, and on the same date, said special demurrer and motion to strike, was argued and submitted to the court, who passed an order overruling same, which said order is in the words and figures following, to wit:

TERRITORY OF OKLAHOMA, *Pottawatomie County, ss:*

In the District Court.

NEIL P. ANDERSON ET AL., Plaintiffs,
vs.
SHAWNEE COMPRESS CO. ET AL., Defendants.

Order Overruling Demurrer to Paragraph- 12 and 13 of Answer.

Now on this 27th day of May, 1905, this cause came on to be heard on the plaintiffs' demurrer to paragraph- 12 and 13 of the answer herein;

The plaintiff- and defendant- being present by their attorneys and said demurrer being presented to the Court, and the Court being fully advised in the premises, finds that said demurrer should be overruled;

It is therefore ordered that said demurrer be and the same is overruled, whereupon the plaintiff excepts to the ruling of the Court.

—— ——, *Judge.*

77 And thereafter, and on the same date, plaintiffs filed in said cause their reply to the answer of defendants, which said reply together with the endorsements therein, is in the words and figures following, to wit:

TERRITORY OF OKLAHOMA, *County of Pottawatomie, ss:*

In the District Court.

No. 2902.

NEIL P. ANDERSON ET AL., Plaintiffs,
vs.
SHAWNEE COMPRESS COMPANY ET AL., Defendants.

Reply.

Comes now the plaintiffs in the above entitled cause, and, for reply to the answer of defendants, deny each and every material allegation of new matter therein contained which is in any wise in conflict with or contradictory to any of the allegations contained in the petition of plaintiffs.

SHARTEL, KEATON & WELLS,
Attorneys for Plaintiffs.

Endorsed: No. 2902. In the District Court of Pottawatomie County, Okla. Neil P. Anderson *et al.*, Plaintiffs *vs.* Shawnee Compress Company, *et al.*, defendants. Reply. Filed in District Court, Pottawatomie County, O. T. May 27, 1905. B. D. Shear, Clerk, by C. A. Stauber, Deputy. Shartel, Keaton & Wells, Oklahoma City, Okla., attorneys for *pa*intiffs.

78. Thereafter, and on the 16th day of September, 1905, plaintiffs applied to the court for leave to file an amendment to paragraph 5 of their said amended petition, which said amendment the court permitted to be filed as to the first clause thereof, but excluded the second or last clause thereof, alleging that the charter or articles of incorporation of the Gulf Compress Company did not authorize it to make or enter into the lease contract complained of, said amendment being in the words and figures following, to wit:

79 TERRITORY OF OKLAHOMA, *Pottawatomie County, ss:*

In the District Court.

NEIL P. ANDERSON, B. L. ANDERSON, and MORRIS E. BURNEY, Co-partners as Neil P. Anderson & Company; F. E. ANDERSON, M. D. ANDERSON, and W. L. CLAYTON, Co-partners as Anderson, Clayton & Company, Plaintiffs,

vs.

SHAWNEE COMPRESS COMPANY, a Corporation; GULF COMPRESS COMPANY, a Corporation; T. F. STUBBS, W. H. BEATTY, C. C. HANSON, and R. E. L. MARTIN, and J. M. AYDELOTTE, Defendants.

Amendment to Amended Petition.

Comes now the plaintiffs above named, and, by leave of Court first had and obtained, amend paragraph 5 of their amended petition, to read as follows, to wit:

5. Plaintiffs further allege, that said defendant, Gulf Compress Company, is a foreign corporation organized and existing under the laws of some other state or Territory, than the Territory of Oklahoma, and that it is, and has been for some years last past, engaged in the business of leasing and operating competing compresses for the purpose of monopolizing, so far as possible, the business of compressing cotton in a large portion, if not all, of the territory, comprised in the cotton raising districts of the United States, and that said pretended lease, which the said Beatty and Stubbs attempted to negotiate, to the said Gulf Compress Company, was procured on the part of certain of the officers of said Company in furtherance of the said scheme on the part of said officers to further restrict
80 competition, in the compressing business and to monopolize the same, the said Company having already leased the compresses at Oklahoma City, O. T., and at South McAlester, I. T., and, as these plaintiffs are informed, and verily believe, either have leased or are attempting to negotiate a lease, for the compress at Muskogee, I. T.; That said Gulf Compress Company is, in its operation, and method of conducting business, a trust and combination in restraint of trade, and commerce; also, that said Gulf Compress Company C. C. Hanson, its President, and R. E. L. Martin, its Secretary, have by the attempted execution of the pretended lease contract hereinbefore set out, entered into a fraudulent combination and conspiracy in restraint of trade with the said Shawnee Compres- Company, and T. F. Stubbs, as President, and W. H. Beatty, as Secretary thereof, in violation of the Federal anti-trust law, and the anti-trust law of the Territory of Oklahoma; and your petitioners are further informed, and verily believe, and therefore, allege that it is the purpose and design of the officers of the said Gulf Compress Company to charge its customers for the compressing of cotton, in addition to the ordinary charges for such compressing, a sum aggregating about ten cents per bale, and by so doing it will entail a loss upon the purchasers of

cotton equal to said extra charges, and that it will be enabled to enforce such charges by reason of the fact that it will control all of the Compress in the Territory to which said cotton would naturally be shipped for compression.

Your petitioners further represent and show that the charter or articles of incorporation of the said Gulf Compress Company do not authorize it to make or enter into the pretended lease contract hereinbefore set out, said charter or articles simply providing that said corporation is authorized to carry on a general storage and compress business at its principal place of business, to wit: the City and
81 County of Mobile, State of Alabama, but with the right to do business anywhere in the United States.

SHARTEL, KEATON & WELLS,
Attorneys for Plaintiffs.

Endorsed: No. 2902. In the District Court of Pottawatomie County, Okla. Neil P. Anderson, *et al.*, plaintiffs, *vs.* Shawnee Compress Company *et al.* defendants. Amendment to Amended Petition. Filed in District Court, Pottawatomie County, O. T., Sep. 16, 1905. B. D. Shear, Clerk. By C. A. Stauber, Deputy. Shartel, Keaton & Wells, Oklahoma City, Okla. Attorneys for the Plaintiffs.

Thereafter, and on said 16th day of September, 1905, said cause came regularly on for trial, according to previous assignment, and both parties plaintiff and defendant, by their counsel, answered ready, and thereupon the trial proceeded, and the following testimony was introduced and offered by the respective parties, and the following rulings, proceedings and orders had during said trial, to wit:

82 *Index.*

Witness.	Page.
F. E. Anderson	1-10
C. C. Hanson	10-52
F. E. Anderson (rec.)	52-54
Plaintiffs rest.	
W. H. Beatty	54-82
J. M. Aydelotte	82-87
F. B. Reed	87-89
W. H. Beatty (rec.)	89-101
Introduction of exhibits	96-7-8-100-135-145
A. E. Nelson	101-106
C. C. Hanson (rec.)	106-115
W. H. Beatty (rec.)	115-120
T. F. Stubbs	120-124
W. H. Beatty (rec.)	124-132
Defendant rests.	
H. B. Therman	132-133
F. E. Anderson (rec.)	133-149
B. L. Anderson	149-163
F. E. Anderson	163-164
B. L. Anderson (rec.)	164-165
Sur-rebuttal:	
H. T. Douglas	165-168

Exhibits.

Exhibits 21, 14, 3, 20, 12, 23, 11, 10, 9, 22, 15, 16, 13	169–174 (Letters, telegrams, etc.)
" 1 and 2	174–187 (Articles of incorporation.)
" 25, 26, 27, 28, 29	188–189 (Letters and telegrams.)
" 24	190 (Statement of Shawnee Com. Co. Mar. 31/04.)
" B	191 (Shawnee Com. Co. by-laws.)
Secretary's minutes	196

83 Mr. KEATON: We want to offer in evidence first a certified copy of the Articles of Incorporation of the Shawnee Compress Company.

The COURT: It will be admitted.

A copy of said Articles of Incorporation of said company is hereto attached, made a part of this record, marked "Exhibit 1" (See page 175).

Mr. KEATON: We next offer in evidence a certified copy of the Articles of Incorporation of the Gulf Compress Company, as filed with the Secretary of the Territory of Oklahoma.

Mr. WOODS: The defendant objects for the reason that it is incompetent, and not directed to any of the issues raised by the pleadings.

Overruled. Defendants except.

A copy of said Articles of Incorporation is hereto attached made a part of this record and marked "Exhibit 2." (See page 179.)

Mr. KEATON: I will next introduce the by-laws of the Shawnee Compress Company.

The same, being admitted by the court, a copy of the same is hereto attached, made a part hereof, and marked Exhibit B. (See Page 191.)

(Copy of by-laws of the Gulf Compress Co. are included in "Exhibit 2.")

84 F. E. ANDERSON is the first witness called to the stand by the plaintiff, and gives the following testimony under oath:

By Mr. KEATON:

Q. You may state your name, occupation and place of residence?

A. F. E. Anderson, occupation merchant, Oklahoma City.

Q. Of what firm are you a member?

A. Anderson, Clayton & Co.

Q. Are you, or is the firm of Anderson, Clayton & Co. a stockholder in the Shawnee Compress Company?

A. It is, yes sir.

Q. Which is it, the firm or yourself?

A. The firm.

Q. How ma-y shares of stock does your firm own?

A. Sixty four shares.

Q. Were you present at any stockholders meeting at which it was proposed to lease the property or any of the property of the Shawnee Compress Company?

A. I was, yes, sir.
Q. Do you remember the date of that meeting?
A. No? I don't know exactly; the minutes I presume will show; it was in May some time.
Q. Did you get notice of the fact that there was to be a meeting?
A. Yes, sir, I received notice.
Q. Do you know where the original notice is; I have got a copy here. Well, examine this paper, copy, and state whether or not this is a copy of the notice?
A. Yes sir, this looks familiar; I think this is a copy of the notice that I received; to the best of my recollection it is.
Q. Well, I would like to get it in evidence.

Mr. BLAKENEY: Objected to as not the best evidence, and as incompetent.

Q. Don't you know whether you have a copy of that notice in your papers?
A. No sir, I think that the original is attached to the first
85 petition.
Q. Not the original. That meeting was held sometime during the latter part of April 1905 was it not?
A. Yes sir, it was in April some time.
Q. Did you attend the meeting?
A. I did, yes sir.
Q. Had you any notice of the fact that the proposition was to come before that stockholders meeting, of leasing the plant or the property of this compress, prior to the time it convened?
A. No sir, I had not.
Q. Now you may state whether or not you have examined the minutes kept by the secretary of that meeting?
A. I Have, yes sir.
Q. Did you bring those up Mr. Aydelotte?

Whereupon Mr. Aydelotte produces paper.
Mr. BLAKENEY: You said you had a copy attached to your amended petition; I call your attention to the fact that this is the original.

Q. I hand you this notice; state whether or not this is the one, or identically similar to the one you received.
A. Yes sir, this is the notice of a special meeting of the stockholders called for April 24th.

Mr. KEATON: We offer that notice in evidence. (Marked "Exhibit 3")
A copy of the same is hereto attached, marked "exhibit 3" and made a part of this record.

Q. Are these minutes erroneous in any regard, as to the manner in which the vote was taken for——

Mr. BLAKENEY: We admit that the minutes are incorrect with reference to the vote being taken by ballot, and that it has been corrected at a subsequent meeting.

WITNESS: I think that the statement here in regard to the action on the motion to lease the Shawnee Compress to the Gulf
86 Compress Company, where it says: "The motion carried by the vote of Benson and Beatty——

Mr. BLAKENEY: We object to this statement as not being relevant to any issue.

The COURT: Will you admit that the vote was not taken by ballot?

Mr. BLAKENEY: For directors.

The COURT: Now what other point is there that you contend for.

Mr. BLAKENEY: The record shows that he voted and that all the others voted unanimously for this lease.

The COURT: Go ahead and prove it then.

Q. That is what I am asking about; what if any participation did you take in the matter of allowing the board of directors to amend the by-laws?

A. I did not vote on the board of directors——

Mr. BLAKNEY: Objected to as not the best evidence.

Overruled. Exception.

A. — and on the proposal of the lease I dissented——

Objected to.

The COURT: He did not ask you that.

Q. Now was there any vote taken by ballot?

A. No, sir.

Q. On any proposition. You are one of the parties—or you-firm—one of the parties to this action?

A. Yes sir.

Q. Did you attend any subsequent meeting of either,—well I will say, of the so-called board of directors——

A. I did, yes sir.

Q. — Of the Shawnee Compress Company. Do you know the date on which you attended that last meeting?—or attended a meeting of the stockholders?

A. I cannot call it from memory; I would have to get those papers and look for it.

Q. Well, go and tell it from those minutes there, look.

A. Yes, I attended a meeting on May 1st, 1905, according to these minutes,—and on June 6th, 1905.

87 Q. Well, what was that on June 6th, a directors' or a stockholders' meeting?

A. That is the stockholders' annual meeting, June 6th.

Q. Now at that directors' meeting on May 1st, 1905, what if any action did you take there with reference to objecting to the board attempting to transact any business?

A. I filed a written protest against that action.

Q. Have you got that?

Mr. BLAKENEY: That is all admitted now in the pleadings.

Q. At the stockholder- meeting of June 6th, state whether or not

the business that was transacted then, or whether an adjournment was had?

A. An adjournment was had at that meeting, without any business being transacted.

Q. When was the next stockholders' meeting which you attended?

A. I don't think I attended any other.

Q. You did not attend any after that. What date was that adjournment to,—look at the adjournment date. Well, I guess I don't care anything about that.

A. There doesn't seem to be another minute here.

Mr. KEATON: That is all; you may cross examine.

Cross-examination.

By Mr. BLAKENEY:

Q. Mr. Anderson, you say that you are a member of the firm of Anderson, Clayton & Co.?

A. Yes, sir.

Q. Anderson, Clayton & Co. are stockholders of the Shawnee Compress Co.?

A. Yes sir.

Q. How much stock did they own?

A. 64 shares.

Q. You are not a member of the firm of Neil P. Anderson & Co.?

A. No sir, I am not.

88 Q. Who generally represented the firm of Neil P. Anderson & Co. at the stockholders' meetings?

Mr. KEATON: Objected to as incompetent and immaterial.

Sustained. Defendant excepts.

Q. Mr. Anderson, who was present at your meeting on April 24th?

A. I presume the minutes will show.

Q. Do you know?

A. I think I could recollect; my memory might be at fault.

Q. Give us your memory?

A. Mr. Beatty, Mr. Stubbs, Mr. Benson, B. L. Anderson, F. E. Anderson, is the best of my recollection.

Q. Who was B. L. Anderson representing?

A. I suppose he was representing stock held by Neil P. Anderson & Co.

Q. He is a member of the firm of Neil P. Anderson & Co.?

A. That is my understanding, yes sir.

Q. And is always representing the stock held by that firm?

A. Yes sir, as far as I know.

Q. Now at that meeting they elected the board of directors, did they?

A. That is my recollection, yes sir.

Q. And they elected it by the passage of a resolution, is that correct?

A. I recollect something about the resolution being introduced there.

Q. Prior to that time the by-laws provided there should be a board of directors composed of nine stockholders, did they not?

A. I think the bye laws will show for themselves; I could not recite them from memory; I know that we started with a board of nine when I went into the corporation.

Q. The purpose of the resolution was to reform you- charter, which only permitted three, wasn't it?

A. The resolution was introduced and voted on; the merits of it I don't know anything about.

89 Q. Well, it was decreased there in the meeting wasn't it?

A. I suppose so.

Q. And you were there as one of the directors?

A. I was a director, yes sir.

Q. You were one of the three directors selected at that meeting; who were the other two?

A. Why Mr. Beatty and Mr. Stubbs, T. F. Stubbs, W. H. Beatty, were the other two besides myself.

Q. Now at that same meeting there was a resolution adopted wasn't there authorizing the board of directors to check up the managers of the company for the last year, wasn't there?

A. At the stockholders' meeting, yes sir.

Q. This was a stockholders' meeting to elect a board of directors; that was what composed the resolution, wasn't it?

A. Yes sir.

Q. What was the duty of that board of directors with reference to checking up the accounts of the preceding management?

A. The Board of directors?

Q. Yes?

A. I don't know whether we ever took any action as a board of directors or not.

—. Well, the stockholders directed you to do it?

A. The stockholders directed the check to be made, yes sir.

Q. Don't you know that a resolution was passed requesting the board of directors to make this investigation, to check up the managers of the last year's business?

Mr. KEATON: Objected to as incompetent, and not the best evidence, and a misapprehension of that resolution; my recollection is that it was not the board of directors.

Objection overruled. Exception.

Q. Answer the question; did not the stockholders direct the board of directors to make this investigation?

90 A. I could not say from memory now.

Q. Now Mr. Anderson, you were at a meeting then of the board of directors afterwards, in which the board of directors selected you to take charge of that matter of investigating the managers for the preceding year's business, were you not?

Mr. KEATON: Objected to as not the best evidence.

Overruled. Exception.

A. No, according to my recollection, the action on the checking of

the books was at the stockholders' meeting and not at the subsequent directors' meeting; tho' my memory is not very clear on that point.

Q. Do you mean by that that the stockholders directed the directors to make the investigation, do you?

A. I can't recollect how it was made; how it passed on the vote I cannot recollect.

Q. Did you vote for that?

A. I reckon I did.

Q. Did you vote by ballot?

A. On the proposition to have the books checked?

Q. Yes?

A. No sir.

Q. You examined those minutes?

A. I think so.

Q. You found them substantially correct except as complained about in the petition?

A. I think so.

Q. Now after this resolution requiring this investigation, the checking up of the managers for the preceding year had passed, what did you do under that resolution?

A. I think I voted,—I recollect voting for it.

Q. Did you receive that and hear the accounting?

A. I did.

Q. And checked them up?

A. I did.

Q. And made a report to the board of directors?

A. Yes.

Q. Then at a subsequent meeting of the board of directors
91 were you present?

A. I think the minutes will show whether I was or not.

Q. Do you remember when you filed,—if the minutes show that you were present, you were present, were you?

A. Certainly.

Q. When did you file your protest?

A. I think the minutes will show that; I do not recollect the date of the meeting.

Q. You attended the annual meeting, didn't you?

A. In June?

Q. Yes sir.

—. ——.

Q. And you say that you attended on June 6th, but you do not recollect attending the next time.

A. What was June 6th, the annual meeting of the stockholders?

Q. Yes?

A. It seems to me; I know we adjourned that meeting, but whether we met again in a stockholders' meeting,—I think we did about a week later, to the best of my recollection.

Q. And at that meeting the motion was adopted ratifying and approving the minutes of all of the preceding meetings, wasn't it?

A. Well if it did, I didn't vote for it.

Q. Yes, but the majority of the stockholders voted for it and it was carried, wasn't it?

A. I presume the minutes will show that.

Q. Well, what is your recollection?

A. That is my recollection.

Q. And that was done by ballot wasn't it?

A. I can't say as to that, if they did it was a very peculiar pre-ce-ding in a stockholders' meeting,—to vote on a resolution like that by ballot.

Q. But you do not know whether it was done or not?

A. I cannot recollect about that.

That is all.

Redirect examination.

By Mr. KEATON:

92 Q. That meeting of June 6th was long after this action had been commenced and it was pending, was it not?

A. Yes sir, some time afterwards.

Q. Was it not at the meeting of May 31st, that they undertook to approve the minutes of the preceding meeting, and was not that the time that you filed your protest, objecting—— .

A. According to my recollection, it was at the next directors' meeting, following the stockholders' meeting; of course we had a directors' meeting the same night immediately after the adjournment of the stockholders, and it seems to me that same night we had another meeting of the stockholders—I mean of the directors, at which I filed the protest.

Q. Was not that protest filed against the proposition of their approving or attempting to approve the minutes of the previous meeting, on the ground that there was no legal board?

A. Yes sir.

Q. Now you say that Mr. Burney Anderson was present at the stockholders' meeting on April 24th?

A. Yes.

Q. And was representing the firm of Neil P. Anderson and Co.; was he present, or any other members of the firm of Neil P. Anderson and Co. at that meeting or any other subsequent meeting of the directors?

A. No, no.

Q. Mr. Burney Anderson voted with you against the leasing of the plant,—the stock represented by him, did he not?

A. My recollection is that Mr. Anderson voted "nay," the same as I did.

Q. When did you become a stockholder, or your firm become a stockholder in the Shawnee Compress Co.?

A. In 1904, in the summer I think,—possible in June or July.

Q. Was it before the annual meeting of that year, of the year 1904?

A. Yes sir, I am inclined to think it was.

Q. It must have been early in May or——

93 A. My recollection is that there was a stockholders' meeting held soon after.

Q. Were you one of the parties of that so-called board of directors of nine?

A. Yes sir.

Q. Now I will ask you Mr. Anderson, whether or not you would have become a stockholder in this concern if you had known or believed that it could lease its entire property and the plant, and turn it over to some other corporation to be operated?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial, and self serving.

Overruled. Exception.

A. Why, I can't say that I would have become a stockholder, altho' I presume it is reasonable——

—the presumption is objected to——

Q. Never mind that. I just wanted to know if you would have become a stockholder——

A. No sir, I would not.

Cross-examination:

Mr. BLAKENEY: Mr. Anderson, your firm tried to buy the compress didn't it?

Mr. KEATON: Objected to as incompetent.

Overruled. Exception.

A. No sir, it did not.

Q. Has not the Neil P. Anderson firm been negotiating to get possession of that property for a year?

A. We made an offer for it, yes sir.

Mr. KEATON: I wish you would wait until I have time to object; we object to that as incompetent, irrelevant and immaterial and not proper*t* cross examination.

Overruled. Exception saved by plaintiff.

Q. Mr. Anderson, would you have bought that stock in 1904, if you had known that your firm and Mr. Anderson's firm—Mr. Hanson's firm was going to buy that compress?

94 Objected to as incompetent, irrelevant and immaterial and not proper cross examination.

Sustained. Defendant excepts.

Mr. KEATON: We now want to offer in evidence the amendment to the charter.

Mr. BLAKENEY: How do you know that this is an amendment, Judge?

Mr. KEATON: Well, I think it was certified to.

Mr. BLAKENEY: What is the importance of it; I don't see any importance.

Mr. KEATON: Well, it is nothing only increasing the capital stock; they at first only had a small amount.

Mr. BLAKENEY: Well, we have no objection.

The same is marked "Exhibit 4."

Mr. KEATON: I thought it was an amendment but I see it is not, but I will offer it any way. That was the original, but it was amended in the other.

A copy of the same is hereto attached and made a part of this record.

C. C. HANSON is the next witness called to the stand and gives the following testimony under oath in behalf of the plaintiff:

My Mr. KEATON:

Q. Where do you live, Mr. Hanson?

A. My residence is in Atlanta, Georgia.

Q. What is your business?

A. I am president of the Atlanta Compress Company, and of the Gulf Compress Company.

Q. In what state or states is the Atlanta Compress Co. engaged in business?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. The states of Georgia——

95 The COURT: In what states are they operating?

Mr. KEATON: And have their place of business?

A. Well, the charter was obtained in Savannah, Ga., and it is operating in Georgia, Alabama and Florida.

Q. In what state or states is the Gulf Compress Co. operating?

A. Its charter was obtained in Mobile, Ala., and it is operating in Alabama, Mississippi and Tennessee, Louisiana and Arkansas, Oklahoma Territory and the Indian Territory.

Q. How many compresses are now under the management of the Gulf Compress Co.?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. We have control of compresses in the states mentioned at 21 points.

Q. Well, do you mean that you have just 21 compresses, or how many compresses in all?

Mr. BLAKENEY: We object to that as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. As some of these places it requires more than at others—it requires more than one compress to handle the business which is offered to us.

Q. How many compresses, Mr. Hanson, does your company handle and control?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.
Overruled. Exception.

A. Twenty seven I believe; including five at Memphis, including six at Memphis.
Q. Are there any other points at which you have more than one Compress, other than at Memphis?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.
Overruled. Exception.

A. Two at Selma, Alabama, I believe.
96 Q. Is that all the places that you have more than one?
A. We have two compress machines at one point, at Mississippi—Meridian, Miss.
Q. How many do you run?
A. We run them both when the business warrants it.
Q. Well, as a matter of fact, don't you operate but one of them?
A. We run them both at the same time whenever the business warranted our doing so.
Q. Well, I mean, you do not operate both of them very much of the time, at the same time?
A. Well, I'll answer that question this way: that we have not a press that we do not operate when the business offers in sufficient quantities to warrant its operation.

The COURT: He is asking you as to the specific fact Mr. Hanson; do you operate both of those presses at one point most of the time?

A. The answer to it was, only occasionally we have enough cotton to keep both of them busy.
Q. About how long have you owned both of those two presses at that point?
A. Since Sept. 1904.
Q. Did you have them both at once or did you have one first and the other later?

Objected to as incompetent, irrelevant and immaterial.
Overruled. Exception.

A. Both at once; they belong to the same company.
Q. How many compresses does your company, by the name of the Gulf Compress Company, have in the Indian Territory, or does it operate?

Objected to as incompetent, irrelevant and immaterial.
Overruled. Exception.

A. One.
Q. Where?

A. At Muscogee.

97 Q. I will ask you if it is not a fact that your company has a contract or is negotiating one, or if negotiations are not pending for your company to lease a compress at South McAlester.

Mr. BLAKENEY: Objected to as incompetent, irrelevant, and immaterial.

Sustained. Exception.

Q. Haven't you a contract practically concluded, a lease contract, for a compress at South McAlester?

A. Well, I will answer that this way: In May I made the South McAlester Compress Company a lease offer, which I understood was satisfactory, and the president of that company left before any papers were executed for Europe, and I have not heard anything about the matter since.

Q. Now you have, I believe you say, six presses at Memphis, your company, the Gulf Company?

A. Yes sir.

Q. How many of those do you operate?

A. All six, whenever there is enough business there to keep six busy.

Q. Yes. But how much of the time does business justify operating the six together, if any?

Mr. WOODS: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. About two months of the season, the cotton season, in so far as compressing is concerned, runs for about six months, beginning the first of September, and about two months of the six there is enough business offered to keep the six plants running for a while.

Q. When did you procure those plants?

Mr. BLAKENEY: Objected to as incompetent, irrelevant, and immaterial.

Overruled. Exception.

A. We procured one of the six in September, 1902, and the other five were turned over to us on September 1st, 1903.

Q. Did you get those other five all from one company, or separate companies or individuals.

98 A. All from one company.

Q. What Company was that?

A. The Merchant's Cotton Press and Storage Company.

Q. Whom did you get the first one from?

A. The Adams Compress Company.

Q. How many compresses in Oklahoma City has your company, or does your company operate, or has it contracted for?

A. One; we are operating one compress in Oklahoma City?

Q. That is under a lease contract is it?

A. Yes sir.

Q. Now Mr. Hanson, which is the older company, the Atlanta Compress Company or the Gulf Compress Company?

A. The Atlantic.

Q. I will ask you if it is not a fact that both companies are operated under one management?

A. Only to this extent: I am the president of both companies.

Q. Is there no other officer of the Gulf Compress Co. who is also an officer of the Atlantic?

A. No sir.

Q. Well, you have, as a matter of fact, as president, you have the general management of the entire business of the two companies; you have a direct control?

A. Subject to the direction of two separate and distinct boards of directors.

Q. You say that on the boards of directions of these two companies there is no director who is a director of each of the companies?

A. Yes, that is right.

Q. Now it is a fact is it not that none of the Gulf Compress Co.'s plants and the Atlanta Compress Co.'s plants are operated at the same point?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. Not at the same points, there is a distance of 20 miles.

Q. How many compresses does the Atlanta Compress Co.
99 operate and control?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. The Atlanta Compress Co. operates at 16 points.

Q. And how many presses altogether?

Same objection. Overruled. Defendant excepts.

A. Twenty five I believe; there are several of the towns that have three presses.

Q. Well, that makes the total of the 2 companies,—that is 27 and 25,—fifty two?

A. Yes sir, fifty-two plants.

Q. Now have you any contract, either consummated or negotiations for a contract, pending, that will probably be consummated at Ada, Indian Ter.?

A. No sir.

Q. Or at Hugo, I. T.

A. No sir.

Q. Was there any negotiations at all for leasing the plant there?

A. At Hugo?

Q. Yes?

A. We have offered the plant there——

Q. Well, has that offer been rejected, or are negotiations pending to lease it?

A. They have been rejected; the plant has not even proceeded far enough to permit a satisfactory——

Q. Under what management is that plant?

A. I don't remember the company; I don't remember the name.

Q. Has your company had anything to do with the operating of the plant at Hugo?

A. None in the world.

Q. Has your company had anything to do with the leasing of the plant at El Reno, the cotton compress?

A. No sir.

Q. Have you made any offer to lease that plant?

A. No sir.

100 Q. Now Mr. Hanson, both of these companies of which you are president the Atlanta Compress Co. and the Gulf Compress Co., are principally engaged in the leasing of plants, and operating them, are they not?

A. The majority of the plants of both companies are operated under a lease.

Q. How many plants, if any, of the 27 plants that are being operated by the Gulf Compress Co. does that company own?

A. Six.

Q. It owns six, where are they located?

A. One at Little Rock, Ark., one at Clarksdale, Miss., and one at Greenville, Miss., and one at Covington, Tenn., and one at Dyalsburgh, Tenn., and one at (?) Corinth, Miss.

Q. Now these at Dyalsburgh and Covington, are they in competitive territory, are they not closely located, together?

A. At Dyalsburgh and Covington?

Q. Yes, they are on the same road, are they not?

A. They are both on the same road north of Memphis, on the I. C.; there are two presses at Dyalsburgh, one of which we do not own.

Q. Are there any independent presses at the city of Memphis that your company does not own?

A. No, sir, there are two presses at Greenville, one of which we own, and there are five presses at Little Rock, one of which we own.

Q. When did you procure your compress at Little Rock?

A. We have bought most of those properties during the past summer; we are prepared to buy or lease, whichever proposition suits us best.

Q. What is the capital stock of the Gulf Company?

A. I would prefer not to answer that unless it is important; it is a close corporation.

Q. Well, the articles are filed here, is that the correct amount of the capital stock,—the articles that have been filed here and introduced in evidence?

101 Mr. Woods: We object on the ground that it is immaterial. Objection overruled. Exception.

A. I will answer the question this way: The authorized capital of the Gulf Compress Co. is one million dollars; so far, however, we have only found it necessary to pay in $400,000.

Q. Now, when and where did you increase the capital stock of that corporation from the amount stated in the Articles at the time it was organized at Mobile, Ala., to wit, $25000?

A. The exact date I could not recall, but the large increase is one of the last few months.

Q. The aggregate amount then was $25000 at the time you filed the articles of incorporation with the Secretary of Oklahoma Territory, was it?

A. You might say that (takes Ex. 2 and examines same) This matter was handled by our counsel, and I have not the record before me, I would state this, however, that the first document here seems to represent the amount that the company first started out with at Mobile. There has been some increase from time to time; I don't know just what those increases are now, I know that the large increase has been in the last few months.

Q. Well, you know of nó other or amended articles of incorporation that have been filed in this territory, showing the aggregate amounts?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. I know of nothing further, no sir, I recall nothing now.

Q. It is a fact, is it not, Mr. Hanson, that the greater portion of the stock of the Gulf Compress Company, or a large portion of it anyway, is owned by the stockholders of a large railroad corporation, or by the officers of such corporations?

Mr. BLAKENEY: Objected to as incompetent, irrelevant, and immaterial.

Objection sustained in that form. Exception.

102 Q. I notice from these articles of incorporation which were filed with the secretary of this territory, the incorporators of this company were Harry D. Smith, Robert H. Smith, Rittenhouse Smith, J. Blocker, Thornton and A. W. Walton, Where do those parties live or where did they live at the organization of the company, on July 29th, 1902? if you know.

Objected to as incompetent, irrelevant and immaterial, and too remote.

The COURT: Well, I take it that this inquiry now is preliminary to something else.

Objection overruled. Exception.

A. All of those people except A. W. Walton, are members of a firm of Mobile attorneys. A. W. Walton at that time lived at Rome, Georgia, and our attorneys at Mobile.

Q. Do you mean by "our attorneys," the attorneys of whom?

A. The Gulf Compress company.

Q. Well, there had not been any Gulf Compress Co. prior to the time of this organization?

A. They were employed to obtain the charter.

Q. Were you interested in that company at that time?

A. I was.

Q. How many others were interested in that company besides those that are named these?

A. I was the sole owner and the sole interest.

Q. Were those attorneys, attorneys for the Atlanta Compress Co. at the time?

A. No sir.

Q. Now where did you say Mr. Walton lived?

A. A. W. Walton lived in Rome, Georgia.

Q. The fact is that these three Smiths and Mr. Walton only had one share each of stock?

A. Yes, sir.

Q. Now who owns this stock now Mr. Hanson, this one million dollars?

103 Objected to as incompetent, irrelevant and immaterial. Overruled. Exception.

A. I would have to have the stock book to answer that question.

Q. Well, give us your recollection.

A. The authorized capital stock is one million, and $400,000 paid in it owned by a few individuals.

The COURT: Now this other $600,000 has not been issued?

A. Has not been issued, that is treasury stock.

Q. Now I want to know who owns this $400,000 that has been issued?

A. C. C. Hanson, H. F. Smith, A. W. Walton, R. E. L. Martin, J. T. Sullivan, J. O. Knight, D. I. McIntyre, J. P. Farrell, A. F. Churchill; that is all I can recall.

Q. You, of course, Mr. Hanson are a stockholder in both the Atlantic Compress Co. and the Gulf Compress Co.?

A. Yes sir, I am a stockholder of record in the Atlanta, and am a stockholder in reality and record in the Gulf.

Q. How much of the Gulf Stock has been issued to you?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.

Overruled. Defendant- excepts.

A. About fifty thousand dollars.

Q. Now you say that H. T. Smith was one of the parties that was in the first organization of the Company?

A. Yes sir, Harry T. is still a stockholder; I didn't call his name just now; Harry T. is the only part- in that document who is still a stockholder.

Q. Except Mr. Walton?

A. And Mr. Walton.

Q. Now Mr. Hanson, are you an officer or director of any railroad corporation?

A. I am not.

Q. How many of your stockholders are?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

104 A. H. T. Smith is a stockholder in the Gulf Compress Co., and also a director, and he is traffic manager of the Nashville C. and — Railroad; there is no other stockholder of the com-

pany who has any connection with any railroad. Now, the Atlanta Compress Co.'s board of directors and stockholders are composed entirely of railroad men. The Atlanta Compress Co. is owned by the railroads and operated by them. I am president of the Atlanta Compress Co. and also of the Gulf Compress Co., with the Atlanta Compress Co.'s consent, but not one dollar in the Gulf Compress Co.'s stock is owned by any railroad, if that is the information you are after.

Q. That is what I required. You are the party who negotiated this lease contract with the Shawnee Compress Co.?

A. Yes sir, I did.

Q. So far as your company was concerned.

A. Yes sir; I, as president of the Gulf Compress Co., made the Shawnee Compress Co. a lease offer, which was accepted.

Q. What prompted you to make that offer? How did the negotiations start?

A. Well, it was in February, when Mr. B. L. Anderson called on me in Memphis, for the purpose of discussing compress matters. As a result of that conference I went to Texas in March and——

Q. I don't care about that.

A. I thought you wanted me to state what brought it out.

The COURT: The question is; why did you seek to get that lease?

A. Why did I seek to get it?

A. The COURT: Yes.

Q. What prompted you to make that proposition?

A. Well, I might say that we being professional compressors, we have been in the market all the time for desirable compress property, by either lease or purchase. In 1903 I had some correspond-
*a*nce with the officers of the Shawnee Compress Co. looking
105 towards the leasing or purchasing of the property, in case they desired to do either and nothing came out of it. I kept the matter before me and in (That was in 1904.)—I kept the matter before me, and in 1905 I had a conference with Mr. Beatty, the Secretary of the Company, and the result of that conference was that I would submit them a lease proposition as soon as I could get my people together, and get permission to do so. About a week after that I submitted them a lease proposition in writing.

Q. Where, and on what date, can you tell, did you have this first conference with Mr. Beatty?

A. I don't remember the dates, but the conference was in Memphis.

Q. How did Mr. Beatty come to go over there; did you write to him, or have any negotiations with him before he went there?

A. I am not sure; there might have been some letters passed between us.

Q. I am trying to get at, who first commenced any negotiations that took place between you and Mr. Beatty, that related to this lease contract.

A. Well, the negotiations were begun by me in 1904, not with Mr. Beatty, but I believe with Mr.—the president of the company at the time,—Mr. Aydelotte.

Q. Well who reopened the negotiations in 1905?
A. I think I did.
Q. You wrote Mr. Beatty then, didn't you?
A. Probable I did; I have not my file before me.
Q. You say that you- company is in the market for desirable compresses, to lease or buy them, all the time; I will ask you if it is not a fact that you are in the market for the purpose of procuring all the compresses that you can get, covering the cotton raising districts of the United States, and for the purpose of shutting out any competition in the compress business?

A. No sir, we are not, and in very few points where this
106 company operates that are large enough to support two presses, and there are two presses owned by two different people, we never get but one.

Q. Well, you testified a few minutes ago didn't you that in some one place in Alabama you had two presses, and did not run both of them but a very short time?
A. They both belonged to the same company, and we leased them both at the same time.
Q. And you have all those presses in Memphis——

The COURT: I think you misunderstood his statement Judge; I think you are misunderstanding each other. His statement was Judge that, where there were two presses owned by different companies, they only leased one.

Q. I understand. But Memphis was large enough for two presses, and you own six there, and you only operate all of them about two months of the season.
A. I believe Memphis is the only exception to the rule that I have just mentioned; but I want to answer that question further; that we did not hope and didn't try to get all of the compresses, we never expected and never hoped to get them, and we could not manage them if we had them.
Q. Well, you could not on your present capital; you could increase it?
A. We are always open to a business proposition, as most business conserns are, but we are not seeking to get all of the compresses. We do not want them; we are only taking what we consider desirable properties, and when they are offered at a price that warrants our taking them over.
Q. Now then, going back to your and Mr. Beatty's conference; he went to Memphis, you say?
A. Yes sir.
Q. Do you remember the date of that?

A. No sir.
107 Q. You say you have not your correspondence here with Mr. Beatty?
A. I do not think I have that file.
Q. Well, have you brought some of the files with reference to this matter?
A. No, I don't know that I have; I could tell if I was in Shawnee

where my luggage is; I can give you approximately about the time he was there.

A. All right?

A. Without looking at the record I would say along about the middle of April.

Q. I will hand you what purports to be a copy of a letter from you to Mr. Beatty,—see if you recognize that—that you wrote him that letter?

A. Without stopping to read it through that looks like one of my letters, it looks like the letter in which I made him the lease offer.

Q. You think it is?

A. Yes sir.

Q. Well, that was written after he had been there?

A. About a week or ten days (marked "Ex. 5").

Q. Now you stated I believe Mr. Hanson, that your company was not seeking in any way to avoid or strangle competition in compresses but simply in the market to buy what you considered good propositions, or leases; if that is so I will ask you how you explain this in your letter to Mr. Beatty with reference to this lease proposition that you submitted in the letter of April 18th: "our getting together on the lease proposition means the avoiding for each other directly or indirectly, of the possibility, if not probability, of unnecessary competition?"

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial and not proper cross examination.

Overruled. Exception by defendant.

108 A. We are operating a press to-day in Oklahoma City and did last season, and our operations there explains what I had in mind——

Q. So then you did want to lease this press to avoid competition between the company operating it here and your company?

A. I will say unnecessary competition, but not competition.

Q. Where is the line drawn between competition and unnecessary competition?

A. Well, one is unnecessary competition, where you are doing so much for nothing, and you soon become bankrupt——

Q. Do not make the proper profits?

A. When you become bankrupt,—that creates unnecessary competition.

Q. Is it not a fact that your scale of charges for the compressing of cotton,—the one you operated under last year, exceeded the scale of charges that the Shawnee Company had?

A. I do not know what the scale of charges of the Shawnee Company was.

Q. Don't you know that when you made this proposition, they had been compressing cotton at a less rate including all expenses, than your company at Oklahoma City?

A. I had heard that they made no charges.

Q. And what were your charges over there?

A. I understand that they were making no charges for services rendered shippers in Shawnee.

Q. Now explain to the Court where the profits of the Company—the compress company, would come in if they made no charges on these outside matters; explain how the compress business in conducted and where a plant gets its profit in the compressing of cotton, or gets its pay?

A. Which plant are you talking about?

Q. Any plant,—all the plants?

A. At Oklahoma City we received ten cents a hundred
109 pounds or fifty cents a bale for compressing cotton/ this is paid by the railroad, the compressing. Now our contract with the railroad says that the compress company has received and receipted for, insured, compressed and loaded its cotton, for which the railroads pay ten cents per hundred pounds, or, practically speaking fifty cents per bale. That is what the railroads pay for.

The COURT: That is the shipments from local points to Gulf points?

A. That is for all cotton compressed; now we receive the cotton compressed at Oklahoma City, consigned to the shipper. We unload that cotton from the cars, weigh it, sample it, tag it, mark it, assort it to the new marks, and then set the cotton back and hold it until the shipper gets ready to ship it out, and when he wants to ship it out he will order it by the tag numbers that we have on it——

The COURT: What do you mean by marking it; do you put the grade and weight on it?

A. Mark it with the shippers' weights and put on an identification mark. Now for all of these services, including 12 months' free storage, we have been charging ten cents a bale——

The COURT: No, fifty cents a bale?

A. No, ten cents a bale, because the ten cents per hundred pounds that were paid by the railroad for unloading or receiving by wagon, insuring, compressing, and loading, covers that service only and they are never intended to cover the public warehouse business, therefore we have the public warehouse business, and handle it as I have stated, for which we have been charging ten cents a bale, including twelve months' storage, if it is held that long.

The COURT: No matter what length of time it is held, the charge is ten cents?

A. Yes sir, in some instances it does not cover the costs.

110 Q. Now you understood and know, didn't you Mr. Hanson, that that ten cents a bale was never charged by the Shawnee Co.?

A. I was told that they had no charge.

Q. Except the charge of fifty cents that covers the railroad. As a matter of fact all cotton practically, compressed or shipped to the compress, comes by railroad to the press, does it not?

A. No sir,—well I would say practically.

Q. I mean practically?

A. A great many compress points receive a lot of cotton by dray-

age and wagons, sometimes as many as 15 or 20 thousand bales come in by wagons to the gins.

Q. Well, in that way their charge of fifty cents per bale would be just the same, wouldn't it?

A. The service is the same on all cotton; after we get through handling the cotton for the shipper, he gets ready to ship it; then we receive the cotton from the shipper instead of receiving it from the car or from the wagon, issue a receipt upon which the shipper can obtain a bill of lading, receive it in other words for the railroads under our contract, insure it, compress it and load it for that ten cents a hundred pounds, which is what they pay us to cover that service.

Q. Well, you say that you charge the local man when he brought it in by dray, an extra ten cents to cover what you call the marking——

A. That covers this warehouse part of it which is not incidental to compressing; it is a warehouse privilege.

The COURT: Now were there any other services that you rendered——

A. Yes sir, a great many shipper- patch their cotton.

The COURT: Patch it, what do you mean by that?

A. Well, I would say that it is a system of tacking up the bagging; in other words, they will have, when the cotton presses through the compress, anywhere from two to six and seven pounds of
111 bagging over the sample hole and the ragged ends, and we receive the bagging from the shippers, and store it away, cut it, and put it on the cotton for them, and charge them two cents for the service, per bale.

The COURT: That absolutely covers all of the cotton?

A. It covers the ragged parts.

Q. So that none is exposed.

A. None is exposed.

Q. Except the edge where it comes together?

A. Yes sir, and we charge two cents for that.

Q. Is that in addition to this ten cents a bale and fifty cents a bale?

A. That two cents is extra, and the shippers never kick on it.

Q. That makes sixty-two cents a bale altogether?

A. There is a profit on the- of 68 or 70 cents you know.

Q. Yes, I am getting at the entire amount of your charges?

A. All the cotton is not patched, however; it is done at the request of the shipper and we charge for it.

Q. Now I hand you this paper, and I will ask you if this is one of your tariffs of charges?

A. This was the proposed tariff for the season of 1905 and six. I am not going to put it into effect.

Q. That tariff then will not go into effect?

A. No sir.

Q. Well, what tariff will go into effect?

A. I have not concluded it as yet.

Q. Have you one tariff for all of your presses or different tariffs in different sections of the country?

A. Different tariffs in different sections.

Q. Now your tariff for Shawnee and Oklahoma City for the ensuing season of 1905 and 6 will depend somewhat on the result of this action, will it not, as to whether or not you get the Shawnee press in your list——

Objected to.

112 Q. Well, your tariff of Oklahoma City, I will say?

A. No sir.

Q. Why did not you adopt this proposed tariff?

A. Well, I find that the tariff is not gotten up as I intended it to be.

Q. Then how does it happen that practically at the beginning of the cotton season, you have not determined on the tariff say, for Oklahoma City?

A. The season is hardly on; the season out here is just one month later than east of the river, October 1st, it would be before we handle any business and October 1st will be ample time for the tariff; but that tariff modified will be apllied at Oklahoma City, without regard to what happens at Shawnee.

Q. Well, in what way will it be modified or do you know?

A. Yes sir, I am going to change that wagon cotton, and make it the same as I do the other cottons.

Q. Then you are not going to change the ten cents a bale for the service that you——

A. No sir, that is just about the cost of service.

Q. And of course you would put that on here?

A. I would say that as far as I know now, I would put the same tariff on both places.

Q. That would just be a net cost to the shipper of an additional ten cents per bale over the tariff that they had last year, as you understand it, at Shawnee?

A. Well, I would say, yes, and ask if you don't see the necessity.

Q. Well suppose the plant at Shawnee made seven thousand dollars profit last year, would there be any necessity of putting that on, if business were as good this yer?

A. Seven thousand net?

Q. Yes, over and above the taxes and insurance?

A. Make that out of ten ce-ts compressing?

113 Q. Make it out of the regular 50 cents per bale; I say if it made that profit, would it be necessary to put on the additional ten cents per bale?

A. I would not think it was necessary, if the amount that the railways pays you is sufficient to enable you to perform all of those outside services.

Q. And make $7000?

A. No.

Q. Now those firms engaged in the buying of cotton are the ones the railroads support; the compress companies have their main support in the local buyer and shipper?

A. In some places, yes sir.

Q. I mean at places like Shawnee?

A. All cotton that we handle is usually owned by some shipper, if that is what you mean; but we compress cotton for the railroads; we don't compress cotton for the shippers; our contract is with the railroads, not with the shippers.

Q. Do you mean to say that you do not know whether the shipper can direct as to where it shall be compressed, or not?

A. I understand that they do; that they send it to wherever they want it compressed, but when it gets to the point where they want it compressed, it is compressed under the contract between the compress and the railroads.

Q. Now I understand that the shipper has the direction as to where the cotton will go to the compress providing it is on the line of road that he is shipping on; you direct that?

A. I mean that they do that, but I don't know it of my own knowledge.

Q. Well, you state that in your letter, that another reason that it would be a good thing to have a lease, because your firm does not engage in buying or selling?

A. No sir, we are simply laborers for hire.

Q. Well, didn't you suggest that it is better for your com-
114 pany to operate it because these shippers having an interest in the plant might cause other shippers to send their cotton elsewhere?

A. I don't believe I did.

Q. Well, just look at your letter. (Ex. 5.)

A. Is this what you are trying to have me explain: "We being neither buyers or sellers of cotton for our own account or for the account of others, have a general but not a specific following." Do you want the definition of that —— "——following which is healthful to all markets, as compared with the condition existing where the policy of a compress company is dictated by a set of buyers. To illustrate: The Lesser—Goldman Cotton Co. have expressed a willingness to open up an office at Shawnee, provided we get control of your plant——"

Q. Well, what I am trying to bring out——

A. I think I understand. Now, our Company being neither buyers nor sellers, either directly or indirectly, serving the public on the order of first come, first served, frequently take over a plant owned by shippers that is not operated satisfactorily to them. They seem very glad to either sell or turn it over to us, and when they do, while they are not our specific followers, there are other buyers to open up offices at the point where we take over the compress; and Lesser told me that if the Gulf Compress Co. opened an office here that he would open one at Shawnee.

Q. What I was trying to bring out is the fact that the shipper has a right to send his cotton to what ever compress he desires under this arrangement?

A. I can't say that Mr. Lesser coming here would bring very mush cotton to Shawnee ——

The COURT: No; the question is, do you know of your own knowledge as to whether or not the shipper has a right to designate the point at which this cotton shall be compressed?

115 A. No sir, I do not know of my own knowledge; I have looked at the railroad tariff and the railroad tariff says that cotton between Oklahoma City and Shawnee can be concentrated and reshipped either from Oklahoma City or Shawnee; that cotton between Shawnee and South McAlester, or the dividing line of railroad, says that it must come back to Shawnee from a certain line, and from that line towards Shawnee—it must come back towards Shawnee. The railroad company does not support that theory fully. In some instances the cotton shipper will route his cotton by a certain compress——

Q. Of course Mr. Hanson, if they had all the cotton within a specified district that was within the territory of certain compresses, it would have to go there anyway?

A. Cotton has not got to go to any compress; if the compress does not make itself useful, it cannot do any business.

12 M. Court adjourns until 1:30 P. M. of this same day.

1:30 P. M. same day. Court convenes and all parties being present in person and by their attorneys, this trial is proceeded with as follows:—

Same witness recalled.

By Mr. KEATON:

Q. Mr. Hanson, who is your manager or superintendent at Oklahoma City?

A. C. T. Turner.

Q. Now, referring again to this tariff, a copy of which I have submitted to you, proposed for the season of 1905 and 6, I will ask you to state whether or not that was furnished to Mr. Turner and he instructed to submit it to the shippers over there?

A. Yes sir. He was furnished with this and was probably instructed by my office—my office man—I probably suggested to him to make a distribution among the shippers. I have since decided to hold up this tariff and get out another one, on account of some changes I believe ought to be made in it.

116 Q. That is principally with reference to charges for wagon cotton?

A. Receiving uncompressed cotton from drays or wagons, weighing, sampling, tagging, furnishing the shipper with certificate, delivering or shipping the sample, if required, and including 12 months' free storage if wanted, twenty five cents; I could not but make that ten cents, the same as we charged for receiving uncompressed cotton from cars, weighing, sampling, marking, and, when it is desired, including 12 months free storage.

Q. Now you refer to the right of the shippers to hold their cotton at your compress for 12 months: what is the average length of time that your cotton remains in your compress after its compression or rather after its receipt for compression?

A. That varies at different points. At Meridian, Miss., we carried a stock of 30,000 bales in our warehouse for eight months.

Q. Yes, but ordinarily, they didn't stay in your warehouse for more than ten or 20 days, did they, at the outside?

A. I would think it would be longer than that.

Q. Do you think that it is longer than that at Oklahoma City?

A. Yes sir.

Q. And you take care of the cotton compressed there if it is all held over for several months——

Mr. BLAKENEY: We object to the cross examination of the witness, and to the questions as incompetent, irrelevant, and immaterial.

Sustained.

Q. Is this a copy of your tariff for the season of 1904 and 5, at Oklahoma City?

A. It seems to be; I can post myself on it in a few minutes probably.

Q. All right, I wish you would.

A. (After examining document.) A. Yes sir.

(The same is marked "exhibit 6" for identification.)

Mr. KEATON: We also offer this proposed schedule for
117 1905 and 6 for identification, together with the explanation of the witness as to the modification that is pretended to be made.

Q. Now Mr. Hanson, I would like you if you can to furnish all the correspondence that you had with Mr. Beatty concerning this lease: I did not understand this morning whether you had that with you; I believe you said that it was probably at Shawnee.

A. My secretary is over there with my files, and I may have it, I don't know, among such files as I carry around.

Q. Now Mr. Beatty went to Memphis to consult with you at your request I believe you said?

A. I said so, but since reflecting over the matter I believe that Mr. Beatty wrote me first and made an appointment to come over. This morning I was in doubt, but that strikes me as being the fact now.

Q. Well, while he was there you discussed this whole matter, did you, about the advantages and disadvantages of the lease contract?

A. I do not recall any detailed discussion; I would say, yes, ordinarily.

Q. And the matter which you designate as "unnecessary competition" between your compress at Oklahoma City and the plant here was also discussed, was it?

A. I would say, yes, I don't recall specifically.

Q. Who drew the lease contract?

A. I did.

Q. All that negotiation and correspondence had been conducted between yourself representing the Gulf Compress Company and Mr. Beatty representing the Shawnee Compress Co. had it not?

A. About the lease?

Q. Yes sir.

A. I don't recall having written any one else except Mr. Anderson over there; I wrote him a short letter after having had a talk with him in Austin, referring to the fact that Mr. Beatty had been over to see me.

118 Q. Did you write him what had passed between you and Beatty?

A. I think it was an answer,—in view of what conversation we had already had.

Q. Well Mr. Anderson was not an officer of the company at all? (Do you mean Mr. D. L. Anderson?)

A. Yes sir.

Q. Was he?

A. I did not address him as an officer of the company; he told me that he was interested and I only wrote him in view of the discussion that we had previously had.

Q. Where was this lease contract executed, here in Shawnee?—I mean by you,—or at Memphis?

A. My recollection is that it was executed here, I had to leave it though and it was sent to me some short time afterwards.

Q. What for?

A. Sent to me in Memphis some time after that.

Q. That is you left it here; why did you leave it?

A. Some question about wanting to get proper authority to make the delivery; I left it here with counsel for the company.

Q. Counsel for your company or the Shawnee Company?

A. I suppose you would call it both.

Q. Now, Mr. Hanson, was the matter of Mr. Beatty's private or personal interests in this compress company, his indebtedness for stock he owned, discussed by you and him in connection with the making of this lease contract?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.

Objection sustained. Plaintiff excepts.

Q. Is it not a fact Mr. Hanson, that, as a part of the agreement for the leasing of the plant, you agreed to take care of some personal indebtedness of Mr. Beatty to the bank here, or of Beatty and Stubbs, to the Shawnee National Bank?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

119 The COURT: As a part of the consideration for the lease now, did you agree to take care of that personal indebtedness?

A. No sir, not as a part of the consideration for the lease, but Mr. Beatty did discuss with me the question of borrowing some money on his stock; I told Mr. Beatty that my company or I individually would take up the second mortgage at eight per cent, if he wanted us to; he said they were paying 12 per cent.

Q. Now are you speaking about his personal mortgage or the company's?

A. The company's mortgage.

Q. Well, I was asking you about his——

A. —Well, I was leading up to what I want to say. After I had made that statement Mr. Beatty also told me that he had some stock hypothecated—some Shawnee Compress Co.'s stock hypothecated, on which he was paying 12 per cent. interest; I stated to Mr. Beatty that if it was true, and the financial status of his company turned out to be as he had represented it to me, that I would loan him some money on that stock at 8 per cent. That was not a part of the consideration however of the lease contract.

Q. Do you mean to say that you would have made that contract with Mr. Beatty, and would have carried his stock without having a lease contract, just the same?

A. I would not have specially cared for it, unless we were interested in a way so that we knew that the property was being managed and how it was being managed; it was one inducement that I had in offering to make the loan.

Q. The loan to Mr. Beatty personally?

A. Yes sir.

Q. You now have all the stock owned by Mr. Beatty and Mr. Stubbs hypothecated, with you or your company, or some banking firm had at your suggestion, have you not?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and
120 immaterial.

Overruled. Exception.

A. In April when I was over here, and after we had made an examination in connection with the lease, I let Mr. Beatty have some money on his stock.

Q. And Mr. Stubbs, also?

A. Jointly.

Q. Jointly. How many shares of stock did they have at that time, placed with you?

A. Three hundred and two shares, or three; it was upwards of 300.

Q. Do you know how many shares Mr. Beatty owned, or Mr. Beatty and Stubbs together, the first time that he talked with you about that?

A. No sir.

Q. For what period of time is this stock hypothecated with you, and for what amount?

A. The note runs two years, and the amount is $7500.

Q. You have a written contract with Mr. Beatty have you not with reference to the deposit of that stock, and the control of it?

A. A regular collateral note.——

Q. Have you any contract with Mr. Beatty, by which it is contracted as to the manner in which that stock is to be voted?

A. Only in case I should discover that it was going to be voted in a manner which would affect my interest in the stock, otherwise I have no interest in the voting.

Q. You have a contract with Messrs. Beatty and Stubbs, whereby they cannot alienate that stock for two years, have you not,—they cannot sell it to any other person or make a loan from any other person without your consent?

A. It is just the usual collateral note; I don't know that that prevents them from taking it up at any time that they want to.

Q. Well, I want to know distinctly about that matter, whether or not under your contract with them they can take it up?

A. I could not tell you without referring to the note?

121 Q. Have you got the note?

A. It is in Memphis.

Q. Well is the note a contract or just a note?

A. A collateral note for two years, at 8 per cent. interest payable semi-annually, with a proxy to vote that stock at stockholders' meetings, provided I find that something is going to be done which will affect the validity of that stock,—my loan interest in it; otherwise I have no right to vote it.

Q. Well you are to determine that matter for yourself—whether you thought it would affect it?

A. Yes sir.

Q. Is it not a fact that you made a contract with them that they cannot alienate it to any other party within two years?

A. I don't know whether that is in it, or anything about that.

Q. Did you ever advise them or their attorneys that that was so?

Objected to as incompetent. Sustained.

Q. Well were your attorneys ever authorized to make that statement to other parties proposing to buy the stock of Mr. Stubbs?

Mr. BLAKENEY: Now we object to that as incompetent.

Objection sustained.

Q. How much if any stock do you claim to own personally, or your company, in the Shawnee Compress Co.?

A. None.

Q. You are not a stockholder?

A. Today I am not a stockholder.

Q. Well, were you yesterday?

A. No sir.

Q. When were you a stockholder, if at all?

A. Never.

Q. Well, have you any arrangement whereby you are to become a stockholder, contracted for with some one?

A. No sir.

122 Q. So far as you know your company or none of its officers own any of the stock, or do they?

A. They are stockholders of record, but they do not own the stock.

Q. Are stockholders of record in this company?

A. I am one, A. W. Walton, R. E. L. Martin.

The COURT: That is in this Shawnee Company?

A. Yes sir.

Q. What do you mean by saying that you are stockholders of record but that you do not own the stock?

A. I mean that when this loan was made that a few shares of stock were transferred to me and the others in order that we might keep up with the stockholders' meetings and what was going on,—just to protect my interest in the loan.

Mr. KEATON: Do you say that we can use that letter?

Mr. Blakeney examines same.

Mr. BLAKENEY: Sure, sure——

Q. I want to ask you if you authorized the writing of a letter of that kind, by your attorney, in connection——

Mr. BLAKENEY: I am not going to let Mr. Hanson testify any thing about a conversation between he and his attorneys. I am willing that the letter should go in.

The COURT: He is not asking for any conversation between attorney and client; he is asking if he authorized the writing of the letter.

Mr. BLAKENEY: Well, we object to it as incompetent, irrelevant and immaterial.

A. Yes sir.

The COURT: You authorized the writing?

A. Yes, sir.

The COURT: It was written by your authority?

A. Yes sir (the same is marked "Ex. 8") (for copy of same see page 201 of this record).

Q. Then I will ask you Mr. Hanson, if you had the ir-
123 revocable proxy authorizing you or the members of your Company to vote said stock during the continuance of the note?

A. There are two separate documents, one is an ordinary collateral note, the other is a proxy giving us the right to vote that stock during the time of the note, whenever we find it necessary to do so to protect our loan interest, in connection with the hypothecated stock.

Q. Well, then did this collateral agreement provide that he could or could not alienate the stock during that period?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception by defendant.

A. I could no answer that without looking at the note.

Q. I mean the proxy contract?

A. The proxy?

Q. Yes?

A. I don't understand the question.

The COURT: Is this provision with reference to alienation, is there *was* any, in the note or in the contract. If there was any provision with reference to alienation of the stock, was it in the note itself, or was it in the proxy contract, the contract for the proxy?

A. My recollection is that it is in the contract for proxy.

Q. Now the question is: did that contract prevent them from alienating the stock during the life of the loan, or the existence of the loan?

A. Selling it?

Q. Yes?

Mr. BLAKENEY: Objected to as not the best evidence.

Objection sustained.

Mr. KEATON: Well, will you produce it?

Mr. BLAKENEY: Yes, I will produce it.

Q. How many shares of stock stand in your name and in the name of Mr. Walton, and in the name of Mr. Martin, of record in this Shawnee Compress Co.

A. My recollection is one each.

Q. And what offices do Mr. Walton and Mr. Martin hold
124 in the Gulf Compress Company?

A. Mr. Walton is manager, and Mr. Martin is auditor.

Q. Who is secretary of your company?

A. Mr. Martin is also secretary.

Q. He signed that lease contract as secretary?

A. Attested it.

Q. Yes, as secretary. You produced this stock to be in your name of record after the execution of the lease contract, since the commencement of this action, did you not?

A. Yes sir, for the purpose stated.

Mr. KEATON: That is all.

Cross-examination:

By Mr. BLAKENEY:

Q. Mr. Hanson, commencing at the subject now under inquiry: was any of the stock to be placed in the name of any other person for you; was not one share of it placed in my name?

A. Yes sir, I think one was in Mr. Maxey's name.

Q. The purpose of it was to have one of your representatives present at the stockholders' meetings?

A. To protect my loan interest alone.

Q. This was not done with reference to the lease transaction at all?

A. Nothing at all.

Q. When was this done; after the case had been set for trial in this court, sometime last May?

The COURT: Just suspended a moment. (Grand jury report.)

Q. Mr. Hanson, when was the loan made with reference to the time that you came here to attend on the trial in this case, on or about the 27th of May?

A. Was it May or April?

Q. The 27th of May?

A. It was made at that time.

Q. Made at the time you were here?

A. Yes sir.

Q. Then when you said that the loan was made in April,
125 you were mistaken, were you, as to the time?

A. Yes, it was at the time I was over here at the trial.

Q. The loan was not affected even at that time, was it; you returned to Memphis and perfected it later?

A. I think it was fixed up while I was here.

Q. Now the proxies that you say that you took from Mr. Beatty and Stubbs, was with reference to this loan?

A. Only.

Q. What other moneys had you advanced prior to that time, to the Shawnee Compress Company?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial, and not within the issues.

Overruled. Plaintiff excepts.

A. Six thousand dollars for the second mortgage; I took up the second mortgage.

Q. At the time that Mr. Beatty came down to see you what was said with reference to that mortgage, and what agreement reached?

Mr. KEATON: Objected to as incompetent, and not proper cross examination, and not within the issue.

Overruled. Exception.

A. I told him that either my company or I individually would take it up at 8%, it was then paying 12, and he said that he would like to get it at a lower rate of interest.

Q. What was that conditioned upon if anything?

A. Conditioned upon our taking over the press under the lease.

Q. Under this lease. Now just state as accurately as you can what Mr. Beatty said to you in that conversation about the loan and this lease, at Memphis, and what agreement you reached about it?

Same objection as last above.

Overruled. Exception.

A. Mr. Beatty simply discussed with me at Memphis the matter of leasing us the property. He asked me if I was in a position to make him an offer to carry back to his people. I was
126 not in a position to make him an offer; it would take me a week or ten days.

Q. What, if anything, was said then about the mortgage?

A. Why as soon as I got,—I told him that as soon as I could get my people together, that I would make him a lease proposition to submit to his people. Then he *spoke* to me about the first and second mortgages on the property; the first mortgage he said was over due, upon which they were paying six per cent. The second mortgage was also overdue, upon which they were paying 12%. And I told him that either I or my company would take up the second mortgage at 6 per cent., if the property was leased to us, and that——

Q. — at six or eight per cent.?

A. At eight per cent.—and that I would see Mr. Webb and

try and get Mr. Webb to extend the first mortgage out over a period in a manner which they could take it up without any difficulty.

Q. What was the amount of the first mortgage?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

Overruled. Plaintiffs except.—and not within the issues.

A. About $17,000.

Mr. KEATON:

Q. The second mortgage?

A. The first mortgage.

Q. Was it not about $12000?

A. Oh, yes, that is right; the first mortgage is about $12000.

Q. Now were you advised in this conversation with Mr. Beatty about the present financial condition of the company, the compress company?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and not proper cross examination.

Overruled. Exception.

A. He did, he told me; he told me of their financial status.

Q. Since taking up the six thousand dollar mortgage, what other items did you have to pay in order to protect your property from sale?

127 Mr. KEATON: Objected to as above.
Sustained.

Q. Mr. Hanson, coming back to the Atlanta Compress Co., you say that that is a corporation organized and run by the railroads?

A. Yes sir.

Q. State the purpose of that corporation—how the railroads are benefited by it?

A. Well, in the south Atlantic States, unfortunately for the railroads, some unscrupulous shippers get control of some compresses——

Mr. KEATON: Well, I object to that.

Q. I will lead up to it. Mr. Hanson, who pays for compressing cotton?

A. The carriers pay for it out of their rate.

Q. Out of their freight rate?

A. Yes sir.

Q. Then what is the operation now of the Atlanta Compress Co. with reference to carrying, and how is it benefited?

A. The carriers pay for the costs of compressing the cotton out of their rate; they regard it as a car mileage question; it is simply a matter of reducing the density of the packages and putting the contents of three cars into one, or two cars into one,—we average about three,—for which service the carriers pay. Now the carriers form a compress company for the purpose of performing that service; their object being to obtain a maximum service for a

minimum cost, so as to avoid paying more than the service is worth; it was simply out of one pocket and into the other——

Q. Just a minute; the compressing of the cotton is for the benefit of the carrier?

A. Yes sir.

Q. To economize space and freight rates?

A. Yes sir.

Q. You call it mileage?

A. Say it is car mileage.

Q. Was the Atlanta Compress Co. organized for the purpose of preventing other compress companies from organizing, or simply to compress the cotton for the railroads?

128 Mr. KEATON: Objected to as incompetent.
Overruled. Except-.

A. Not for the purpose of preventing other compresses, because other compresses to a certain extent assisted in the control of it——

The COURT: Do the compresses of the Atlanta Compress Co. compress cotton belonging to other shippers, and belonging to persons who bring cotton in on wagons?

A. All the cotton we compress is for the carriers except at the port of Savannah, where the carriers have no interest in the question of transportation.

The COURT: The Atlanta Compress Co. compresses no cotton except for the railroads?

A. The railroad companies; they compress their own cotton, and pay themselves for it.

Q. That is, the Atlanta Compress Company does not operate except for the purpose of compressing the railroad's own cotton?

A. That is all.

Q. Do they declare any dividends?

A. Never declare a dividend; they were not organized to make money; they organized for the purpose of obtaining the maximum service and protection at the minimum cost.

Q. Briefly, what protection did the railroads get from operating their own compresses?

A. Well, I will have to refer to the matter that I started to mention a while ago.

Q. Well, this cotton in the compresses and in charge of the compress company, are bills of lading issued for it?

A. Yes, and the carrier's liability for the cotton uncompressed, under the bill of lading, is the same as if it were in their freight depot or in their cars.

Q. Then if the compress company is sued for fraudulent
129 weights or other matters, the railroad company are charged with this freight?

A. And have had to pay for it.

Q. And the Atlanta Compress Co. is entirely organized by the railroad companies for the protection of themselves in the mechanical handling and compressing of cotton?

A. Yes sir, as it happened twice, where through cotton stopped to

be unloaded, insured, at the compress, and reloaded and shipped off, shipped away; one instance is——

Mr. KEATON: We object to these illustrations of what happened. Objection sustained. Exception.

Q. Now what services does the Gulf Compress Co. render for the railroad——

A. The identical services that the Atlanta Compress Co. does under similar contracts and agreements.

Q. Now I want you to take up the different classes of service rendered by the compresses, the three classes you have named, one for the railroad, one for the shipper and one for the wagon load, and explain the different services rendered to the several parties?

The COURT: I understand that myself, unless you want to get it clearly in the record.

Mr. BLAKENEY: I don't believe your Honor understands it as I want you to; what I want to do is to show the different services, and to show the value of such services, and the amount of it, and to have him state it in answer to a single question.

WITNESS: The only explanation that I can make now is the one that I made this morning which the Judge says he understands.

The COURT: When you have a contract with the railroad company on a through shipment, you unload it, compress it and reload it when they want it?

A. And insure it, for that we are paid 10 cents a hundred——

The COURT: Now this is the only service you render for that?

130 A. That is the only service.

A. You don't charge anything for storage because it remains with you a very short time? *Q.* Now, for other shippers who have it compressed and stored with you, you charge them 50 cents a bale?

A. No, ten cents a bale.

Q. You have that fifty cents a bale for compressing and ten cents for storage?

A. We do not charge the shippers with the fifty cents.

Q. Suppose a man were to bring cotton to your place that had not been on the railroad, and stored it with you what would you charge him?

A. I would charge him fifty cents in that instance, and would not charge the railroad anything, and ten cents for all the other handling.

The COURT:

Q. Which would make sixty cents a bale?

A. Yes sir.

Q. Do you have any of that kind of cotton?

A. No sir.

Q. The service you render the shipper is unloading——

A. Unloading the cotton from the cars, and receiving it from the

drayage, weighing, sampling, tagging, marking, assorting to new marks, setting it back, and holding it until the shipper gets ready to let it go.

Q. For which you charge ten cents a bale?

A. Then we have to take out the cotton when it gets ready to go by the tag number, for which service we charge ten cents, including unlimited free storage.

Q. Is that service reasonably worth ten cents?

Mr. KEATON: Objected to as incompetent.

Sustained. Defendant excepts.

The COURT: That has already been answered two or three times.

Q. Now is that the usual charge among compressors?

A. Yes sir.

Q. Do you know whether or not Mr. Anderson's interests
131 in Texas have uniformly charged that this year?

A. No sir, when I say the usual charge among compresses, I speak largely of the states and territories, excepting in Texas.

Q. It is the usual charge for compressing in the Indian Territory is it?

A. That is my understanding.

Q. And in Oklahoma Territory?

A. Yes sir.

Mr. KEATON: Objected to as incompetent, and to the competency of the witness.

Sustained.

Q. Do you know whether or not it is the usual charge by the compresses in Oklahoma Territory?—Yes or no, do you know?

A. I cannot answer that question that way.

Q. The question is, whether you know it of your own knowledge?

A. I can only tell by what I have been told.

Q. By the men operating the compresses?

A. Yes, I was told——

Mr. KEATON: Wait, wait, we object.

Q. State whether or not the ten cents charges for services you have mentioned for shippers, has usually been made in Oklahoma Territory by the compressers?

Mr. KEATON: Objected to as incompetent and to the competency of the witness, which has not been shown.

Sustained.

Q. Now Mr. Hanson, what interest, if any, have you in the Atlanta Compress Company?

A. None except a salaried officer.

Q. Now, has the Gulf Compress Co. made any effort or formed any combination with other compress companies to fix or regulate prices?

A. Never.

Q. Now are there any companies that are operating a part of the

compresses in the same territory where you are operating, or the Gulf Compress Company?

A. Yes sir.

Q. Who are they?

132 A. I could enumerate them. Nearly all large points where they are large enough for two presses, have two presses, and everyone is operated by some one independent of us; we know nothing about them, but we don't operate a single press anywhere that is not,—if it is not making competition in the same town, it does all around in nearly every direction,—within 20 or 25 miles there is competition.

Q. Competition within 25 miles of your press would compete in the same territory.

A. Shippers in Shawnee and shippers in Oklahoma City are both working in mutual territory, and the same way with shippers at all other points in other directions from Shawnee and Oklahoma City, but it is not the same class of competition that you have right in the towns. It is competition from a certain direction, nevertheless.

Q. Now how has the Gulf Compress Company adjusted its tariff with reference to the tariffs formerly existing in the towns where they have taken charge of plants?

A. We have never changed the tariffs; at some places we have taken over properties where there were no tariffs, we put in this same charge for services not incidental to compressing at those places; we never changed the tariff, whatever we found there we left it there.

Q. They are generally uniform, are they?

A. No, they vary quite a good deal; it depends upon the methods that the shippers adopt in handling the cotton; it covers just about the cost of handling it. Along, especially in the Mississippi Valley we handle a good deal of the long staple cotton, that requires some more care in handling than the short staple does; the difference in value is anywhere from five to twenty dollars a bale, and the tariff for handling, not incidental to compressing, in the Mississippi valley is higher than at any other points, to cover this extra care and

133 handling.

Q. Do you require the shipper who stores cotton with you to pay this ten cents, or can the shipper attend to his own cotton and avoid the payment?

A. Well, in most cases,—take for illustration, in Oklahoma Territory, Neil P. Anderson & Company do not pay the ten cents charge, because they handle their own cotton and we are put to no expense.

Q. You give the shipper the privilege of doing that is he desires?

A. Yes sir, free of charge; we furnish him facilities and let him do his own handling.

Q. That is, the ten cents charge is optional with the shipper?

A. Yes sir, and some of them do handle their own cotton.

Q. Was the purpose of making this lease with the Shawnee Compress Co. for the purpose of making rebates or destroying competition with the Oklahoma City plant?

A. No sir, such a thought never passed through our mind, and we could not do it if we wanted to.

Q. Why?

A. Because the compressing of cotton is not a necessity; the compress company to succeed must make itself useful to its patrons, and any arbitrary regulations or hardships imposed on shippers,—it is only a question of a few days, and they make other arrangements.

Q. Now what other compresses are there in the immediate territory around Oklahoma City and Shawnee; you do not know the points very well, do you?

A. No, but they are all around.

Q. In El Reno?

A. One.

Q. In Chickasha?

A. Another.

Q. One further out at Hobart?

A. Yes sir.

Q. Snyder?

A. Yes sir.

134 Q. Tulsa.

A. I don't know about that.

Q. Sapulpa?

A. Sapulpa.

Q. Pauls Valley?

A. One going up there.

Q. Ardmore?

A. Yes, and one at Ada and at South McAlester.

Mr. BLAKENEY: That is all, Mr. Hanson.

Redirect examination.

By Mr. KEATON:

Q. What does this Atlanta Compress Co. charge the railroads?

A. In Georgia they charge the railroads seven and a half cents for export shipments, and the shipments going to the New England mills; and cotton going to southern mills, six cents.

Q. That would be something like 30 to 37½ cents per bale?

A. Yes sir.

Q. They make no charge there of this ten cents extra?

A. Yes sir, both companies render shippers every service that they want, and let him do anything that he wants to do; but they make that small charge to cover the cost of handling, if they handle it.

Q. I thought that compressing of the Atlanta Company was only for the railroads and not for outsiders?

A. The compressing is done for the railroads, but the handling of it at concentrating points is done for the shippers.

Q. The shippers own the cotton?

A. The shippers own the cotton, yes sir.

Q. What is the difference. I understood you to testify a while ago, that this Atlanta Compress Co. owned the Compresses—the railroads owned the compresses, and that they only compressed it for themselves——

A. —except at Savannah.

Q. Except at Savannah.

A. That is on the south Atlantic coast.

Q. Now I understand you to say that any shipper can have his cotton compressed at the Atlanta plants.

A. They can but they do not do it.

Q. No shipper. Doesn't any shipper have his cotton com-
135 pressed at the Atlanta presses?

A. They permit the railroads to have it pressed.

Q. Oh, well, that is the same way that they do it here; they permit the railroads to take it——

A. —and have it pressed, but the amount that the railroads pay is only for the compression, but this other is not covered in their services.

Q. Well, the amount that the railroads pay here is only for the compression, and this is not covered in their services, is that so?

A. No sir, not if I understand——

Q. Now in your compress what else does the railroad pay you at Oklahoma City, other than for compression?

A. There is no other charge——

Q. Now as a matter of fact, is it not true, that the railroad does not pay anything, but the shipper pays the railroad the 50 cents and it goes in on the transportation?

A. No sir.

Q. Do you mean to say that the railroad loses fifty cents?

A. Yes, they get more cotton in a car by it.

Q. And do not charge the shipper anything to compensate them for it?

A. That is my understanding of the tariff.

Q. Well, they put it in the rate don't they?

A. The rate is 45 cents with the carriers privilege of compression.

Q. Yes that is right; the carrier's privilege of compression; now suppose that fifty cents a bale though, is figured right in that rate, the railroad charges it to the shipper, does he not?

A. The shipper pays the freight.

Q. Certainly, and that includes this pressing. In other words, the railroad rate would be that much less if they did not have to pay the fifty cents?

A. In theory you are correct, and in practice you are wrong, because when they haul it through flat they charge the same
136 as when they haul it through compressed.

Q. Well, you mean that when they haul it through flat,—that is in these big bales?

A. Yes sir.

Q. —they charge the same rate as they do when they reserve the privilege of compression.

A. Well, I would not answer that positively for this part of the country, so well as I can in the delta and in the east; I know that the tariffs that I have seen show a rate of sixty cents?

Q. On cotton?

A. On cotton "carrier's privilege of compressing"; now if they

choose to carry that cotton through and not compress it, all right; if they choose to compress it and pay for it out of that rate, that is also all right.

Q. Well, do they prefer to carry cotton in the large size, or double or treble what it is when compressed, or in the small size after it is compressed, at a smaller rate than the other—fifty cents less? As a matter of fact does not the railroad in fixing the rate, fix it so as to cover that compressing, and make the same amount of money pay everything, the pressing and the shipping of it in smaller bales, so as to get the whole advantage for themselves?

Mr. BLAKENEY: Objected to as argumentative.
Sustained.

Q. You never knew of a railroad company doing very much hauling or pressing for anybody for nothing, did you?

Same objection.
Sustained.

Q. Now you say that the Atlanta Compress Co. has never paid any dividends?
A. That is right.
Q. The earnings of it have gone to the railroads direct, if any?
A. In services.
Q. And the compressing of cotton there is at a lower rate a good deal than your rate here?
A. Yes sir.
137 Q. Not over eight cents. Now your Gulf Company never paid any dividends has it, to the stockholders?
A. No sir.
Q. What have you done with all the surplus, if you have any?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.
Overruled.

A. We have it yet.
Q. Have you got a surplus fund?

Mr. WOODS: Objected to as incompetent, irrelevant and immaterial.
Overruled. Exception by defendant.

Q. Have you a surplus fund in the treasury?
A. We have but I do not know exactly what the amount is; I will know pretty soon; it is the end of the year now pretty near and we are closing up——
Q. Well, did you have any surplus at the end of last year when you closed up?

Same objection.
Overruled. Defendant excepts.

A. We did.
Q. How much?

Same objection, ruling and exception.

A. The Gulf Compress Company is three years old last year, so the end of last year was the second year, we only operated in the city of Memphis, Tenn. My recollection is that our surplus was about twenty odd thousand dollars.

Q. Now is it not a fact Mr. Hanson, that the policy of your company is not to divide any surplus into dividends, but to use all the earnings in securing new properties and compresses?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

Q. Does your company own or operate any presses in the State of Alabama, where it was originally chartered,—I mean the Gulf?

A. Yes sir.

Q. Where?

A. Two presses at Selma, one at Demopolis, one at Uniontown, one at Decatur.

138 Q. This Atlanta company has been securing some properties too, has it not, from year to year?

A. No sir, it secured one additional press this year.

Q. Is that the only one it secured since it first started?

A. Oh, no, it is the only one that it has secured in the last 18 months.

Q. What is the freight rate over in the Atlanta Compress territory?

A. From where to where?

Q. To the ports?

—. From what points?

Q. From the interior?

A. What point in the interior; I can't answer unless you give me some point.

Q. Well, say from Selma?

A. To which port?

Q. Boston?

A. Selma is only a short distance from Pensacola, Florida and only a short distance from Mobile, and a further distance to——

Mr. BLAKENEY: He said Boston.

Q. Is not the freight rate from 40 to sixty cents to the ports?

A. Forty to sixty cents to the ports,—I think that is about right.

Q. Now here it is about seventy cents is it not?

A. And a very much longer distance it is.

Q. And there they pay from 30 to 37½ cents for compression, and here it is fifty cents?

A. Yes sir.

Q. Mr. Hanson, you were speaking about what would be a reasonable charge for services rendered the shippers, marking, weighing, assorting and so forth; is it not a fact that what is reasonable for a compress company to charge—would it not be based entirely upon the capacity of that company, and the earnings of the compress.

A. The earnings of a compress depends largely upon the number of bales of cotton that it handles; there is a minimum number for

operating expenses, and a maximum number; therefore,
139 when you figure the tariff, of what is a reasonable charge for services rendered, you have got to take in all of the evidence.——

The COURT: In other words, you figure the tariff upon the minimum number of bales——

WITNESS: —Judge, it is this way; the compress is located at a point, and it is usually necessary to get from twenty to twenty five thousand bales to make both ends meet; now if you get from 75 to 80 thousand at the same press, you can afford to put in a low tariff.

The COURT: But where it does vary, and you receive reports as to the minimum and maximum number of bales that you will probably receive, in fixing the tariff you would naturally adopt the minimum as the basis for the tariff, would you not?

A. Yes, because you do not know what you are going to have, we take the five years past and assume that that would be about the business for the next season, but it varies and you cannot tell——

Q. —and upon that you would fix your rate?

A. Yes; now our rates at Oklahoma City, for these extra services——

The COURT: —Yes, but he is not asking you that.

A. Well, I was going to say that it is just about what covers the cost.

Q. Yes, I understand. Did I understand you to say Mr. Hanson, that in making this lease, you did not have in mind the affecting or regulating of competition at all with your Oklahoma City press?

A. The competition still exists, shippers that are doing business in Shawnee do not do business in Oklahoma City——

Q. —I understand that, but you don't mean to say do you that the purpose for which this lease of the Shawnee Compress was made, with other purposes—was not the regulation of the compresses and of competition?

A. I can best answer that this way I think: as far as the
140 charges are concerned, the press in which Mr. Anderson is interested made the largest charges last year——

Mr. KEATON: —now stop; I didn't ask you about that. I move to strike that out, we object to it.

A. —but we did not take that off——

Q. I am not asking you about that. Notice my question; I am asking you if it was not one of the purposes for which this particular lease was made, to regulate competition between those presses, the one at Shawnee and the one at Oklahoma City?

A. No sir.

Q. Then why did you write this in this letter to Mr. Beatty?

A. I only referred to the possibility.——

Q. Why did not you say this morning that that matter was discussed between you two?

A. No sir; we discussed all the afternoon, and I do not recall discussing that particular feature of it.

Q. Don't you know as a matter of fact that the statement you

made in your lett-,—or that it was the elimination of competition that was in your mind when you wrote it, and that that was one of the purposes for executing that lease?

Mr. BLAKENEY: We object to the counsel stating that; it is not in the letter.

WITNESS: —I said possible competition—I referred to that simply as a possibility: frequently presses get to fighting——

Q. —Now did not you put it stronger than a possibility?

A. Will you let me read the letter please. (Reading from exhibit 5) "—avoiding for each other, directly or indirectly, of the possibility if not probability,—" Now compresses get to scrapping among themselves sometimes, and unnecessary competition results.

Q. And that is what you had in mind to regulate by this lease?

141 A. Yes, unnecessary competition, such as ruinous——

The COURT: I understand, you have been all over that. Let's get on Gentlemen.

Recross-examination.

By Mr. BLAKENEY:

Q. Mr. Hanson, did you lease the Shawnee press as a business proposition or did you lease it to prevent competition with Oklahoma City?

Mr. KEATON: Objected to as incompetent, irrelevant, and immaterial, and calling for the opinion of the witness.

The COURT: Objection sustained. He has been all over that.

Q. Did you have any other motive in leasing the press at Shawnee, other than "unnecessary competition?"

A. I took a simple business view of it,—a business proposition,——

The COURT: He has been all over that Gentlemen; stand aside.

Mr. KEATON: Now we offer this letter in evidence, and also the by-laws of the company.

The COURT: Letter (Ex. 5) will be admitted.

The COURT: You offer the by laws with reference to the leasing of this plant?

Mr. KEATON: I offer the by laws for the purpose of showing what constitutes the board of directors under the by laws, and how the board of directors should be elected.

The COURT: It will be admitted.

Mr. KEATON: Pages four, five, six and seven.

The COURT: Well, you can offer all of them.

Mr. KEATON: Well, I offer all of them.

Mr. BLACKENEY: And the minutes.

Mr. KEATON: Well, I do not admit that the minutes were ever legally adopted. I will not offer all of them.

142 A copy of which letter, marked "exhibit 5" is hereto attached, and made a part hereof; and a copy of said by laws, are also hereto attached and marked "Exhibit —."

F. E. ANDERSON is here recalled for further examination by the plaintiff and gives the following testimony under oath:—

By Mr. KEATON:

Q. What did you say was the business you are engaged in?
A. Cotton buying.
Q. How long have you been engaged in that business?
A. Do you mean the present firm or individually?
Q. Individually; how long experience have you had?
A. Since 1893.
Q. At what place?
A. In Jackson, Tennessee and at Oklahoma City.
Q. How long have you been in Oklahoma City?
A. Five years.
Q. Have you any office in Shawnee?
A. We have an agent here?
Q. Your firm has an agent in Shawnee?
A. Yes sir.
Q. Do you know the custom of regulating the tariff, or the freight rebates for cotton shipped by the railroad companies in this vicinity, and the vicinity of Shawnee and Oklahoma City?

Objected to as Immaterial.

A. I do not understand the question.
(Question withdrawn.)
Q. Are you acquainted with the railroad tariffs that now exist and have existed for the shipment of cotton from Shawnee and Oklahoma City and vicinity?
A. I am, yes sir.

Q. Are you acquainted with the custom of railroad com-
143 panies in making shipments for the cotton presses themselves?
A. Yes sir.

Mr. BLAKENEY: Objected to as incompetent, irrelevant, and immaterial.
Overruled.

Q. You may explain to the court if you know what the tariff is, or the freight rate, and also the method of having the cotton compressed, and who pays the fifty cents a bale for the compression?
A. The rate to where, any of the ports or to Galveston?
A. Yes, say to the nearest port.
A. The nearest, the rate to Galeston is seventy cents with carrier's privilege of compression; the presses ordinarily,—collect the compression from the railroad company; it is ten cents a hundred less than the unpressed cotton to any point.
Q. Then as a matter of fact the railroad pays for the compression of the cotton—or is it the shipper?
A. Oh, I understand it to be the carrier.
Q. Well, I want to find out whether it is included in the rate or not?

A. It is included in the rate.

Q. Now with reference to the concentrating of cotton and the competition between the presses, what option if any have the shippers as to where their cotton shall be compressed?

A. The railroads prescribe certain limits in which it may be done.

Q. Well, is there or was there any competition between the Oklahoma City press and the Shawnee press?

A. Yes, there was.

Q. This cotton could be concentrated from the natural territory of the one, into that of the other, if the shipper desired, could it?

A. Yes sir.

Q. Well, where else could you take that cotton now; those two presses are both operated by the same company, then where would there be any other competition?

144 A. Why cotton in this district could be pressed over at El Reno, Oklahoma City or Shawnee, and some of it right in this district could be compressed at South McAlester.

Q. Could you ship cotton from Shawnee——

The Court: Could you ship cotton from here to El Reno for compression?

A. You could ship it there on what you call the terminal rate; but to ship it and reship it and compress it,—no, I don't think you could from here to El Reno.

Q. Well, what would be the defect of the other method?

A. Their terminal rates are so high; they never could afford to pay them.

Q. That is regulated, that rate, by whom?

A. By the railroad companies.

Plaintiff rests.

In Chief.

W. H. Beatty is the first witness introduced by the defendant, and gives the following testimony under oath:—

By Mr. Blakeney:

Q. Mr. Beatty, you are the secretary of the Shawnee Compress Co. are you.

A. Yes sir.

Q. How long have you been secretary?

A. About 15 months, a little over a year.

Q. How long have you been connected with the Shawnee Compress Co. as a stockholder, just since that time?

A. About two or three months before; I got my stock at the next annual meeting, several months after I was elected.

Q. What has been the financial condition of the Shawnee Compress Company during the last year?

Mr. Keaton: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. The company since,—even before my firm became a
145 stockholder has been in a bad condition financially, as shown by the books of the company, that were turned over to me, and I investigated before my firm bought the stock.

Q. What did you pay for the stock Mr. Beatty?

Objected to by the plaintiff.

Overruled. Exception.

A. We paid about 12 cents on the dollar for the stock, with the understanding that we assumed our part of the liability of the company.

Q. What was the capital stock of the company?

A. Fifty thousand dollars.

Q. And what was the outstanding indebtedness at the time you took hold of the company?

A. The outstanding indebtedness at the time we first went into the company was about $22,000.

Q. And what property did they have, or assets?

A. They had the properties which they now have with the exception of some improvements, which we have had in the way of platforms.

Q. What were those,—the assets of the company worth, at the time you bought this stock, if you know?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception by plaintiff.

A. That was purely a matter of estimate——

The COURT: What is your best judgment as to its value?

A. I urged my value,—I urged it as a prospective purchaser——

Q. Answer the question?

A. What is my conclusion based on?

The COURT: No, what in your judgment was the property worth?

A. Twenty seven thousand dollars was the basis upon which we went into the company.

146 Q. —no, the assets?

A. We considered that the gross value.

Q. What were the liabilities?

A. The liabilities were about 20 or 22 thousand, and they gave us the valuation as we put it, ten or 12 cents on the dollar, as we put it, for the stock.

Q. At the time that you went to Memphis to see Mr. Hanson, what was the condition of the compress company at that time?

A. The Company had had one season's business and as best we could estimate it, was about $7000 better off than we were before.

Q. What was the condition, tell us all about it?

A. We owed $17500, with possibly three or four hundred dollars in excess, which was covered by a first mortgage of $11250, to the Webb Compress Co., and the balance of this note on the old mortgage, held by the Shawnee National Bank; they were both past due and had been for some months.

Q. What effort, if any, was made by the holders of this indebtedness to coerce payment?

A. Demands had been made, more particularly by the holders of the Shawnee National Bank, at the beginning of the season we owed them about $8500, that note matured on the first of January 1905. In the spring after the note matured that time, I would get credit in the bank and that credit was applied on our note, as the bank held it past due and payable, and we were continually having checks thrown out.

Q. What do you mean by "thrown out,"—protested?

A. Well, they were not protested, they were not paid,—they simply came back to me.

Q. Now Mr. Beatty, did you owe the Oklahoma National Bank anything?

147 A. I have had several little transactions with the Oklahoma Nat'l bank where they cashed checks for employés, and otherwise they would have to hold them until we could get our——

Q. What did the Oklahoma National *Nat'l* do in the effort to collect payment——

Mr. KEATON: We object to the introduction of any testimony as to the financial condition of the corporation as incompetent, irrelevant and immaterial.

Overruled. Exception.

Q. What, if any thing, did the Oklahoma National Bank do with reference to collections?

Same objection, ruling and exception.

A. On one occasion they stopped collection; I say on one occasion; I remember one.

Q. State how they stopped?

A. They stopped payment by garnisheeing or holding up in some legal manner the charges due us from the railroad.

Q. They garnisheed the railroad company for charges due from the railroad company?

A. Yes sir.

Q. Were you pressed for any other indebtedness that was due?

Same objection.

Overruled. Exception.

A. I was continually pressed because I was acting as paymaster for the company,—I was not treasurer, but I was acting as such, and I was giving checks in payment of debts,—and I went to the different stockholders, and even went to the residences of the stockholders, and wrote to the address of each stockholder for the purpose of getting additional funds; I even made drafts on the stockholders, on each of them, and those drafts were returned by the non-resident stockholders; some of the resident stockholders paid the amount, but the non-resident stockholders refused the drafts, and then the resident stockholders demanded that the payments that they had made be

148 returned, which I did, sending each of them their assessment back; I was annoyed in that manner constantly.

988

Q. How about the taxes,—were you able to pay the taxes?

A. No sir, I was not able to pay the taxes, and I was not able to pay the Webb Press Company, the $675.00 accrued interest, which I had agreed that I would pay if they would agree to an extension of their first mortgage; that matter stands unsettled yet.

Q. Did you get the money to pay even the interest of the Webb mortgage?

A. No sir, I tried to get it, but could not; I went to the Oklahoma Nat'l Bank and to the Shawnee Nat'l Bank, and they knew the condition we were in, but I thought probably by showing them that the season was good, that I could make a short loan, and get it, but I was refused by both of them.

Q. Was the property offered for sale for taxes?

A. The taxes, about $175 or $200 was due, and I made every effort to get the money to pay the taxes at the same time that I did to get it to pay the employés and the Webb interest.

Q. What did you finally offer to do to get the money to pay the taxes?

A. I finally went to Atlanta, Georgia, to see Mr. Hanson, and also to try to get Mr. Webb to hold up on us, and while there I made a conditional arrangement to get the money to pay the taxes, as the property was advertised for sale, and I finally got that money from the Gulf Compress Company.

Q. The taxes had been due since January?

A. The taxes had been due since January 1st.

Q. Now in this state of affairs, what did you then do relative to the Shawnee Compress Company; did you go to Memphis to see Mr. Hanson some time in April?

149 A. I went to Memphis some time in April for the double purpose of preventing the press property from being sold as a whole, and from it consequent bad effects on my holdings as a stockholder, sometime in the early part of April; I don't remember the date.

Q. Whom did you go to see?

A. I went to see Mr. Hanson.

Q. How did you happen to go there?

A. I happened to go there from the fact that I had known Mr. Hanson for about 15 years; that was the object of my going to him as far as I was personally concerned, and I went to him with the idea that I might lease this property to him, from the fact that Mr. Aydelotte, a former president had received a proposition from Mr. Hanson to lease the property.

Q. Well you saw Mr. Hanson did you?

A. I saw him.

Q. Why did you say you went?

A. I went for the purpose of seeing if his company would lease our plant.

Q. And why did you want to lease it?

A. So as to prevent its being sold for the indebtedness,—by the Webb Press people, and by the Shawnee National Bank; for if the

Webb people foreclosed their first mortgage, the Shawnee National would want theirs paid too; they both were past due.

Q. Did you see Mr. Webb at Memphis?

A. Not on that trip.

Q. Now state what you did?

A. I laid the matters of the company before Mr. Hanson, with a view of seeing if he would take up the first and second mortgages, or take up the second, and to see if I could make, with his help, a satisfactory arrangement with Mr. Webb, and to see if he would make us a proposition for leasing the plant, and to get him to make one; I told him that if he would make one, I would call a
150 stockholders meeting and have it submitted. He told me that he would consider the matter and advise me later, which he did, in approximately ten days. That was all the talk that I had with him pertaining to the company's business.

Q. When you came back did you receive any notification from Mr. Hanson with reference to the lease or any proposition?

A. I came back, and promptly had a discussion with the resident stockholders, and then issued, or got the president to issue, I don't remember which, notice of a call meeting to consider whatever matters might come up.

Q. That stock meeting was held on the 24th of April, was it not?

A. Yes, held in the latter part of April, that was the stockholders' meeting held in the latter part of April.

Q. April 24th; that was the stockholders meeting that has been testified to by Mr. Anderson?

A. The same meeting that Mr. Anderson described.

Q. Who was present?

A. Frank Anderson, and Burney Anderson, C. J. Benson, Mr. Stubbs, and myself.

Q. State what you did at that meeting with reference to presenting this proposition to the stockholders?

A. The minutes themselves state it fairly and substantially; the financial condition of the company was first discussed, and then I submitted,—told the stockholders about the written proposition from the Gulf Compress Co. to lease it, the plant, The matter of leasing was discussed by all of those present at the time, and finally was voted upon; those minutes I think will show that all those present voted for it except the two Andersons, Frank Anderson and Burney Anderson. Also the matter of the second mortgage was discussed, and I told them that I had reason to believe that I could get the second mortgage of $6000 carried at 8%, whereas we were
151 paying one per cent. a month; and also the matter of the first mortgage was discussed, and I stated and doubtless showed the letters that I had received from Mr. Webb,—I am pretty sure that I did,—that the Webb matter could be arranged by paying the accrued interest to date, and having it extended.

Q. You were one of the committee appointed by the stockholders to see Mr. Hanson, were you?

A. The stockholders in the meeting appointed a committee of Frank Anderson and C. J. Benson & myself for the purpose of con-

ferring with Mr. Hanson or the Gulf Compress Company and affecting this lease, and the matter was discussed, and I believe during the discussion I offered Mr. B. L. Anderson the lease proposition if he would take it——

Objected to and motion to strike out the last part of witness' answer.

Mr. BLAKENEY: Let it be stricken out.

Q. Did you finally reach an agreement with Mr. Hanson?

A. Our committee met two days after the stockholders meeting; Mr. Frank Anderson was requested to attend both by wire and by 'phone, and he didn't come, he wired something about missing the train, and he wired that he was not in favor of the lease, and then wired in the same wire that in addition to his opposing the lease, that if the lease was made over his veto, and that if the lease of the property was affected that the lease was void. Mr. Benson and I, as a majority of the committee of three, after discussing the matter, formerly met Mr. Hanson and I think Mr. Hanson's secretary,—we met them,—Mr. Hanson, I remember was there, and closed the lease with him.

Q. What was the condition of the closing of the lease with Mr. Hanson?

A. The lease, the terms of it?

Q. No, not the terms of the lease itself, but the conditions?

152 A. Mr. Benson and I closed the matter formerly; we had a conversation at the Burt Hotel, and then walked into the Oklahoma National Bank——

Q. —Wait a minute. What was said at the time of closing it, or what arrangement was made about the second mortgage?

Mr. KEATON: Objected to as incompetent, irrelevant, and immaterial and hearsay.

Overruled. Exception.

A. The conversation with Mr. Hanson embodied the second mortgage proposition.

Q. Well, state what it was?

A. Our conversation in the Burt Hotel was with Mr. Benson and *and* myself as the committee, and Mr. Hanson representing the Gulf Compress Company,—for the purpose of effecting a lease for five years at $60000 a year, and for the purpose of getting Mr. Hanson to take up the $12000 first mortgage at 8%, my recollection is that Mr. Hanson said that as to the taking up of the second mortgage, that that would be determined by the report that his auditor who was in town for the purpose made, after looking into the financial condition of the company, but we expect to close this with the lease proposition and we stepped into the National Bank to wrtie a written acceptance, and Mr. Benson and I left it in Blakeney and Maxey's office, for Mr. Hanson.——

Q. Now, before you closed the lease did you have a director's meeting?

A. Before we formerly closed the lease we had a directors' meeting, the same day that the lease was closed, but my recollection is

that the meeting was held immediately after the action of the committee, for the purpose of ratifying the committee's action. I don't remember whether it was just before, I think it was just after, and why I think it was after is that I think that the was the object of the meeting.

153 Q. —Now, passing over this meeting. Who was present at the annual meeting and when was it held?

A. The annual meeting was in June, my recollection is that the by laws call for the first Tuesday in June, or the first Monday; and at that meeting was present——

Q. —Well, what of the Andersons, that is all I want?

A. Well, Frank Anderson was present, and Mr. Burney was not, and I don't know that anybody was present but Mr. Stubbs and Mr. Frank Anderson and myself, and we adjourned the meeting for two weeks afterwards.

Q. Did you at this annual meeting approve the minutes of the stockholders' meeting held on October 26th?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial, and not the best evidence, and after the pendency of this action.

Overruled. Exception.

A. The minutes were approved, Mr. Anderson in each instance voting "nay." Mr. Benson was present at that meeting, and a majority of the stock——

Q. A majority of the stock voted to approve them did it?

A. The majority of the stock voted to approve.

Q. Now, coming back to the earnings of last year: you say that you made something like $7000; explain to the court why you had additional expenditures,—what you did with the profits,—what you used the money for?

A. Our earnings of about $7000 had been expended,—about $5000 for the improvement of the plant,—the platform; that expenditure was necessary before we commenced the season; we arranged with the bank to make the improvements, that were necessary; the plant was at a low ebb from a physical standpoint,—and the money had to be applied on the platform.

154 Q. What is the condition of the plant now?

A. It is about double the capacity of what it was 15 months ago.

Q. What did you do with the rest of the earnings?

A. The rest of the earnings went to reduce the indebtedness to the Shawnee National Bank, and it was reduced from $8500 to $6000.

Q. Then at the end of the season of last year you found all of this indebtedness due and pressing and no means with which to lessen it except to sell or lease the property, did you?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial, leading and suggestive.

Overruled. Exception.

A. The company was still in the same condition.
Q. I asked you if it was necessary to lease or sell the property, to pay this indebtedness?

Objected to as leading and suggestive.
Overruled.

A. It was absolutely necessary to do so under these conditions and another very much more pressing one.
Q. What was the other pressing one?
A. The fact that the minority stockholders were trying to buy the property at a sacrifice price.

Mr. KEATON: We move to strike that out as incompetent, and as not responsive and as a conclusion of the witness.
Motion sustained.

Q. Just state the conduct of the Andersons with reference to assisting you in getting out of this financial difficulty; what were they doing?

Mr. KEATON: The same objection and asking for another opinion of the witness.
Overruled.

Q. Well, what if anything were they doing with reference to trying to force a sale?

155 Same objection by the plaintiff and asking for the opinion of the witness.
Overruled. Exception.

The COURT: State what you know that they did?
A. What I know they did; I know that they came to Shawnee, I know that Mr. Frank Anderson and Mr. B. L. Anderson, came to Shawnee at two different times, about a week apart, and attempted to buy——

Mr. KEATON: Now, we object to that——

A. —I saw them proceed to the Shawnee National Bank; of course, as to what conversation they had there I don't know only what Mr. Aydelotte and Mr. Douglas told me.
Q. Were you shown any letters there in the bank or in either one of them?
A. I was shown a letter.
Q. You had frequently received letters, had you, from the Andersons, B. L. and F. E?
A. No sir, I did not receive any letters from them.
Q. Do you know their handwriting?
A. I know their signature.
Q. Did you see any letters in the Shawnee National Bank signed by them?
A. I remember one letter that I saw.
Q. Now did you have any conversation with them?
A. I had a conversation with Mr. H. T. Douglas.
Q. Did you have a conversation with the Anders[illegible]ns?

A. No, they didn't come into my office.

Q. Now, at this meeting did you have any conversation with them?

A. At this stockholders meeting I did.

Q. Just state what was said by them?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

156 A. I had a conversation with Mr. Burney Anderson, and Mr. Frank Anderson, Mr. Burney Anderson being the chief spokesman, and told them of what I had been informed. I told them that Mr. H. T. Douglas had advised me that they had offered $25000 for the plant, and that he, Mr. Douglas, did not know what it was worth and he wanted something done with his debt, and I told Mr. Anderson that Mr. Douglas had told me that he had refused his offer, but that Mr. Douglas had told me that he wanted his indebtedness liquidated; and I told Mr. Anderson that I considered his offer too cheap,—this was at the stockholders meeting,—I told Mr. Anderson that I considered his offer too cheap, and knowing what he was trying to do, I did proceed,—Beatty & Stubbs proceeded to buy up sufficient of the stock in the meantime to give us the majority and to prevent their buying the property up at $25000; that is the conversation that I had with B. L. Anderson in my office and also on the platform of the Choctaw depot.

Mr. KEATON: We move to strike that out as incompetent, irrelevant and immaterial and as a self-serving declaration.

Overruled. Exception.

Q. What if anything did Mr. Anderson say in reply or in taking part in this conversation?

A. He said that they had made a private investigation and that was what they considered the property worth, and he asked me if I had their bid raised, and I told them that I had not, and that I had not asked for any offer, and that the property would not be sold if I could avoid it.

Q. If this lease was carried out about how long would be required to pay the indebtedness and clean up the property to the Shawnee Compress Company?

Mr. KEATON: Clean up the indebtedness?

Mr. BLAKENEY: Yes.

157 Mr. KEATON: Objected to as incompetent irrelevant and immaterial and to the competency of the witness, and asking for mere speculation.

Sustained.

Q. What was about the aggregate indebtedness, including labor, running expenses, taxes, insurance, and mortgage indebtedness against the compress company on the first of May or the 26th of April, I'll put it there, 1905?

A. Between 17 and 18 thousand dollars.

Q. And that included the insurance?

A. There was subsequent items amounting to some 5 or 6 hundred dollars which are not included.

Mr. BLAKENEY: If the court please, just to save time, I think that is all; if I have happened to overlook anything I will recall him.

Cross-examination.

By Mr. KEATON:

Q. Mr. Beatty, you say that you told Mr. B. L. Anderson that you and Mr. Stubbs had bought enough stock to make you majority stock holders?

A. I did not.

Q. Then how much stock did you and Mr. Stubbs own prior to the purchase you refer to?

A. At the time of the meeting; at that time we held 260 shares.

Q. How much did you own prior to the time you made the purchase?

A. 133 shares.

Q. Now you did not pay for it, did you?

A. I did.

Q. You had it all hypothecated did you not?

A. Had it all hypothecated, yes sir.

Q. And you had money enough to go on and buy this other stock?

A. Yes, I had to arrange that at the Shawnee National Bank.

Q. The Shawnee National Bank had an option on that stock for ten days did they not?

A. I don't remember the time, but I bought it from Mr.
158 Douglas on about the 10th or 11th day of April.

Q. Have you got your stock book here?

A. Yes sir.

Q. When did you make the transfer on your books?

A. The stock book is there; you can look and see.

Q. Did you pay Mr. Douglas for that stock?

A. I did, yes sir.

Q. Did you pay Mr. Nelson anything?

A. No sir, I did not deal with Mr. Nelson.

Q. How much did you pay Mr. Douglas?

—. I paid him $25 a share; I don't remember how much,—I remember too——

Q. Did you pay him cash for it?

A. Yes sir.

Q. Did you pay him by check or how?

Mr. BLAKENEY: Objected to.

Overruled.

Mr. KEATON: I am going to show that he never did own that stock.

Overruled. Exception.

A. I paid Mr. Douglas by check, on about the 10th or 11th, the day that the date shows on that stub.

Q. Did you have the money in the bank to pay for it or borrow the money?

A. I borrowed the money.

Objected to as immaterial.

Overruled. Exception.

Q. Well, did you see the option contract that Mr. Douglas had?

A. Yes sir, he gave it to me.

Q. Have you got it?

A. No sir, I think probably that when I took the stock myself I gave it back to him.

Q. When did you say this was transferred on the books (handing witness book)?

A. On the 12th day of May; wait one minute; beg pardon; it was made of the 11th or 12th day of April.

159 Q. I want to find the original old shares of the Nelson stock.

A. Here they are sir (handing counsel).

Q. Now who made this cancellation on here, did you?

A. I made the cancellation in red ink.

Q. Did you do that on the date that it bears date here?

A. It was done on that day or the day after, my draft in the bank will show, the day or the day after.

Q. Had Mr. Nelson been notified?

A. Mr. Douglas told me afterwards that Mr. Nelson had not been notified.

Mr. BLAKENEY: We move to strike out what somebody told him, and as not responsive——

WITNESS: As to when Mr. Nelson received notice I don't know; except my wife stated there——

Mr. BLAKENEY: We move to strike out what the witness said Mr. Douglas told him, as hearsay and not responsive.

Motion sustained.

Q. Your purpose in buying this stock, *this stock*, Mr. Beatty,—one of the purposes was to help consummate the negotiations for this lease, was it?

A. It was so as to protect my minority interest.

Q. Wasn't it also to carry the lease of the property?

A. If necessary to carry the lease of the property?

Q. You had been over to see Mr. Hanson about making the lease?

A. I was going to buy the stock,—the five years' lease would show me its value—I hadn't made any trade——

Q. Yes, but you knew what proposition he would make, didn't you?

A. No, I didn't know what proposition he would make. His letter there is dated on the 18th of April, and I bought that stock I think on the 11th of April, as will be shown by telegrams from the Western Union office.

Q. Telegrams between whom?

160 A. The parties in interest.

A. You and whom?

A. The telegrams were between me and the party with whom I could make any arrangement. I notified Mr. Hanson on the 11th of April that I had bought the stock.

Q. You had arranged with him to get the money while you were there?

A. I had arranged with Mr. Benson of the Oklahoma National Bank to get it at 12 per cent., and Mr. Hanson had offered to let me have it at 8%.

Q. Who did you get it from?

A. I got it from Mr. Douglas temporarily, and I get it from Mr. Hanson finally, he had said that he would lend it — me, or that he would provided the investigation of his auditor was satisfactory,

Q. Was that when you went over to see Mr. Hanson, about what date?

A. About the first week in April.

Q. You had discussed the matter of making the lease with him?

A. I had discussed the matter of getting him to make us a proposition.

Q. And you had discussed the matter of his advancing you the money to buy this stock with?

A. Which had not been agreed to.

Q. And you had been talking of your stock, the shares that you had and the shares that you were going to get, and his making you this loan?

A. Yes, but it had not been agreed to.

Q. And then you came back and made your definite arrangements for the money about the 11th of April by wireing Mr. Hanson?

A. No sir, my telegram simply stated that I had bought the stock; I had made that arrangement with Mr. Douglas.

Q. Temporarily?

A. Yes sir.

Q. And it was also understood between you and Mr. Hanson that; with this additional stock, if you got it, you could force that lease?

A. That was the understanding.

161 Mr. BLAKENEY: That was obvious; we object to it as being obvious.

Sustained.

Q. Now, Mr. Beatty, you say that this property was about to be sold a couple of weeks ago for the taxes of 1904?

A. Yes, I was in Houston and didn't know anything about it at the time it was advertised.

Q. You were manager of this compress company last year were you not?

A. No sir.

Q. Well, you were secretary and kept the books?

A. I was secretary and kept the books at the request of the treasurer, to keep trace of the money transactions.

Q. And you made the statement to the stockholders?
A. Whenever requested, yes sir.
Q. I hand you this, state whether or not this is your handwriting
A. That is my handwriting, and I wish to state that a much more full statement was made frequently.
Q. Well, I will get you to look at the items on that and explain to me how the plant came to be advertised for sale for the taxes when you had them charged there to the company as having been paid, $170.63 as the last half of the taxes of 1904?
A. I will take pleasure in stating why I thought that I had paid the taxes; when I got back from Houston and found the property advertised for taxes, I insisted it was a clerical error on the part of the tax department. The receipt I held bore the date of February 22nd, and I supposed it was for the taxes due on the 1st of January, as they were paid by the bank in February; and I made my entries on my books as taxes paid up to that time, thinking that they were paid, and I insisted that I was right; I hunted up the receipt and found that I was right about that date, and then upon investigation I found that those were the taxes for the year previous, and that the taxes for the past year were past due,
162 and that I didn't know it——

The COURT: We will suspend for a few minutes gentlemen.

4 P. M. Recess for ten minutes.

WITNESS: With the permission of the court I wish to tender the voucher I made reference to, showing how the mistake occurred; this is the voucher on which my answer was made (producing paper).
Q. The facts are now Mr. Beatty, that all of the stockholders supposed that the taxes were paid?
A. We all thought that they were paid.
Q. You never notified any of these minority stockholders——
A. When I came back from Houston, I looked up that voucher, and I says "I am right, I have the voucher——
Q. —You did not notify any of the stockholders that it was sold for taxes, did you?
A. No sir, the board of Directors held a meeting; the board of directores were all notified of its condition.
Q. Who do you claim was the board of directors?
A. Mr. Stubbs, Mr. Beatty and Mr. Benson.
Q. When do you claim that they were elected?
A. At the last annual meeting.
Q. When was that?
A. About the middle of June.
Q. Well, the firm of Neil P. Anderson was not represented at that meeting—annual stockholders' meeting, were they?
A. At the annual stockholders' meeting,—they were neither present at neither meeting; they were duly notified.
Q. You sent them notice?

A. For both meetings.

Q. Now you say that you had not made a definite agreement with Mr. Hanson prior to this stockholders' meeting on the 24th of April, 1905, either as to whether or not he would furnish you the money to buy that stock from Mr. Nelson, or as to whether he
163 would take the lease?

A. I said that; I repeat it.

Q. You first testified, didn't you, that you saw Mr. Hanson the day following that stockholders' meeting?

A. Two days after or one day after, I don't remember which.

Q. And you closed the lease?

A. The committee closed the lease with him.

Q. Had not Mr. Hanson made you a definite proposition on the 18th of April.

A. By mail he had and it was submitted on the 24th of April, at the stockholders' meeting.

Q. But as far as you and Mr. Hanson were concerned, you had reached an agreement as to what you would take?

A. I had not.

Q. When did you issue your notices for the stockholders' meeting?

A. Either the 13th or the 14th; I speak of the date of the notices because I know——

Q. Didn't you know at the time that you sent out those notices that that lease proposition would be before them?

A. I did not, I had not received it.

Q. So you did not know that the matter of the lease would come before the meeting?

A. I knew that as far as the present stockholders were concerned we wanted to take it up; I knew as an individual stockholder that I wanted to take it up.

Q. Why did you call the meeting?

A. I called the meeting so that in case we did have it, to have it acted upon.

Q. You did not specify in the notice what the meeting was for?

A. I did not.

Q. You stated that you talked the matter over with Mr. Hanson about advancing you money—a personal loan, and that you talked over the proposition of the lease, and he said that he would
164 have his auditor check over the financial condition of the company, as you explained it to him——?

A. —He said that he could not state definitely until his auditor checked it up, and he had his auditor check it up after the stockholders' meeting, and the auditor came with him at the time he came.

Q. Then he never checked it up until after the meeting, and that proposition was on the 18th?

A. The proposition of leasing?

Q. Yes?

A. That had no connection with the checking up of the books at all.

Q. I thought you said that he would not take the lease until he had checked up the books?

A. I certainly did not intend to state that; you connected the two together in your question and I could not answer one without the other; he checked up the books before deciding what he would do about taking up the indebtedness, and advancing me money, on my stock. No reference was made as to the financial condition in talking over the matter.

Q. He wanted to investigate the financial condition of the company to determine whether he would make you a loan?

A. Yes.

Q. How long was the auditor in checking up to determine whether he would make you the private loan, and make this $6000 loan?

A. He checked it up the day he was there and made his statement.

Q. You had a stockholders' meeting on the 24th and Mr. Hanson and his auditor were there the next day?

A. Either the next day or the next after that.

Q. Did you wire Mr. Hanson anything about the result of the meeting the stockholders' meeting I mean, before you met him here?

A. My recollection of the matter is to the effect that upon receipt of his letter of the 18th, which I got about the 20th, I notified him that I had already called the meeting for the 24th, and that
165 shortly afterwards we would submit him a proposition, and I think he came the next day afterwards, and I think the lease was made the day following that, the 26th.

Q. Don't you remember stating to Mr. Burney Anderson that Mr. Hanson was coming that evening, as he was going to the train?

A. Very probably I did. The whole matter was gone into at the stockholders' meeting and I probably advised him, I know that Mr. Hanson had got there the day of the meeting, because Mr. Anderson met him before the committee did.

Q. You had your meeting of the committee on the 25th didn't you?

A. I think we met on the 24th and 5th and 6th, and finally closed it on the 26th.

Q. Well, Mr. Frank Anderson wired you on the 25th about missing the train and could not get there, didn't he?

A. I think that was the day, yes sir.

Q. Wasn't that the date that you closed up the matter, you and Mr. Hanson?

A. I could not say; it might have been the 25th, he came on the 24th.

Q. Now what was the day that Mr. Hanson's auditor checked up the financial condition of the company?

A. At the same time; I don't remember whether it was the 25th or 26th, but it was about that time.

Q. You had made the arrangements to have these two undertakings of the company taken care of before the arrangement was made with Mr. Hanson on the dates you speak of, had you not?

A. No sir, it was discussed very fully at the meeting of the 24th, so I could not have done it. I had the conditional arrangement with Mr. Webb as I have stated.

Q. Didn't you write to the Webb Compress Company at
166 Minden, La., on the 23rd of February, 1905, that you could state with due authority that the company could arrange at pleasure to have the $7000 debt extended to run two years?

A. I did write that on that date, and I had that arrangement with Mr. H. T. Douglas who was then carrying the debt; I had a verbal understanding that——

Q. Didn't you make a statement to the stockholders there on the 24th that you had both of these debts arranged for?

A. I most surely did not, because I stated in the minutes what was done; I did not; I stated that it could be arranged and stated how it could be done.

Q. Do you say that your minutes show that you stated how it could be done?—how it could be arranged?

A. I think I stated how I thought it could be done; I don't know how strong I put it.

Q. You simply stated that you thought it could be arranged did you?

A. I don't think I stated it that strongly; the letter to Mr. Webb was based upon the arrangement that I had with the Shawnee National.

Q. You state here that an arrangement could be made to renew or extend the Webb debt at its present interest, and get the second mortgage loan of $6000 carried for one or two years at 8%; it was ordered on motion of C. J. Benson; now that was your statement wasn't it?

A. Yes sir, that was on the 24th; I had in mind the arrangement I had discussed with Mr. Hanson.

Q. I thought you stated that you never arranged that, that you did not know what Mr. Hanson would do, until his auditor came and checked it up on the 25th or 6th?

A. I said that to the stockholders, and they advised me to do it, the minutes show that.

Q. You don't state here that that could be done, if a lease
167 of the plant was made to the Gulf Compress Co. for a long period of time, do you?

A. I think that the whole transaction of the lease that day was discussed at that meeting.

Q. Now the Webb Compress Company did agree to extend their indebtedness, did they not?

A. Provided we paid the interest, that was stated at the stockholders' meeting.

Q. Did not the Webb people write you as follows: "Dear Sir: Yours 13th, and we will let the note extend over, and trust that your expectations in regard to dividends earned will be realized." March 17th, 1905?

A. I got that letter and the stockholders were advised of it.

Q. And still you testify here that absolutely you had to make that lease in order to get an extension of the Webb Compress Co.?

A. Yes sir, but we never were able to pay that interest.

Q. Well, you might just as well carry it without the lease as to carry it with the lease, hadn't you?

Objected to as argumentative.
Sustained.

Q. Now you say that that was all the proposition that you made to them,—to pay the interest; when have you made that proposition, and how?

A. I had made the Webb Company this proposition by mail; I did not see them personally, and had a letter with reference to that, and Mr. Frank Anderson has it in his possession and I presume you have it. He, as director, was kept advised of what I was trying to do.

Q. How many letters did you write to Mr. Hanson or the Gulf Compress Company?

A. A very few, two or three.

Q. All written prior to this stockholders' meeting, weren't they?

A. And of all of which letters copies have been furnished
168 to Mr. Anderson at their request.

Q. How many wires did you send to Mr. Hanson in regard to the company's affairs and your own affairs?

A. I sent him very few in regard to the company's affairs. My own affairs I don't remember.

Q. Well, prior to the time you say you bought these 133 shares of stock of Mr. Nelson, how much were you indebted to the Shawnee National Bank, for which you had stock pledged as collateral security?

A. I think it was about 30 cents on the dollar.

Q. You mean you pledged your previous stock at about 30 cents on the dollar?

A. That is my recollection.

Q. Then you got this from Nelson at 25 cents and borrowed all that money from the bank?

A. Yes.

Q. Now wasn't that loan, that last loan, with the distinct understanding that the banks should only carry it temporarily, and that Mr. Hanson would take it up?

A. They had my word that I could make that arrangement.

Q. How much did you owe the bank outside of what you had stock pledged for?

Objected to as incompetent, irrelevant and immaterial.
Sustained. Exception.

Q. How much did Mr. Hanson advance you?

(2)

A. $7500, which was less than I had borrowed from the bank to pay for the Nelson stock; less than the amount that I had borrowed from the bank, and that I got to pay for the Nelson stock.

Q. How much more did you owe the bank than Mr. Hanson took up?

Objected to as immaterial. Overruled.

A. I don't know; I don't remember, except that I know that that did not clean up the entire amount.

169 Q. You don't know, can't you approximate it?

A. No sir, because I had other collateral with them; I had some mules and a crop, a potatoe crop, and other collateral.

Q. You pledged how many shares of stock to the Hanson Company?

A. Three Hundred and two.

Q. Was that pledged to the Gulf Compress Co. or to Mr. Hanson?

A. I think it was probably a personal transaction with C. C. Hanson; it was a personal transaction with Mr. C. C. Hanson.

Q. Well, that was understood between you and Mr. Hanson from the beginning of your talks and negotiations with him, that he would only make you that personal loan in the event that the Gulf Compress Co. succeeded in getting this lease?

A. No sir, that was not probably understood, because I said to Mr. Hanson: I want you to get your auditor to investigate and see what you will loan me on my stock.

Q. As a matter of fact he did not make you a personal loan until after the lease, did he?

A. The auditor came and closed it up. I asked him to have the auditor come and examine, so that he could make me a loan in any event, and he said that he would have his auditor look into it.

Q. Now here is a statement of the affairs and the financial condition of the Company—the Shawnee Compress Co.—and its net earnings for the seasons of 1904 and '5, up to January 1st, 1905, which you made, did you not?

A. I didn't make it myself.

Q. Well, did you authorize it and send it out?

A. I did, with the explanation on the back of it, yes.

Q. Will you look at that and state what you showed the net earnings to be there?

A. $7386.00.

Q. And five cents?

A. And five cents.

170 Q. Now this is on this page. Now look at that along there, for which you say you have expended this money, and see how much you showed the earnings to be there?

A. It don't show any.

Q. What does it show?

A. It shows disbursements of funds, borrowed money can be disbursed as well as any other money.

Q. Did you borrow money?

A. We had borrowed money from the bank, yes sir.

Q. Do you show here now how much of this is expended for improvements on the plant?

A. Expended for improvements, $4956.50, and some permanent equipment, 413.

Q. Do you remember making the preliminary statement to the stockholders or any of them?

Mr. BLAKENEY: If the court please, I would like to object to these questions; it is absolutely not denied that the company was not able to pay their indebtedness.

Mr. KEATON: Of course we deny it, we deny it in the reply,—everything that we did not specifically admit.

Q. Now, did you make a preliminary statement about what improvements were necessary to run that plant, during the season of 1904 and '5, and the cost?

A. I made a preliminary estimate.

Q. How much did you make it?

A. $3350.00; that is only half the question; I wish you would ask me the balance; if I am permitted by the Court to continue my answer. I was requested to make an estimate, and I made the estimate of $3350. When about that amount had been expended there was an executive committee, comprised of Mr. Anderson, Mr. A. Nelson and myself, and Mr. Anderson didn't come down but I conferred with him by mail, and my recollection is that I told him that we wanted to make further improvements,—that it seemed advisable to extend the platform about 100 feet further. Mr. A. E.
171 Nelson, being a majority of the executive committee, went over the ground and discussed it and increased the improvements, it was 33⅓ per cent. more than was originally intended two months prior to that, and that was authorized by the executive committee.

Q. Now, this $7386.05 shown by your statement here, was the net earnings of the company, over *the* above the insurance and whatever taxes you paid?

A. Up until that time, yes sir.

Q. Of course, later, you thought that you had paid these taxes for 1904. Now do you know how many bales of cotton you had handled for that compress at the time this statement was made?

A. We had handled some 40 odd thousand bales,—I don't remember just how many.

Q. Was it 42982?

A. It shows there.

Q. All right, look at that and see.

A. (Complying and examining paper.) 42982.

Q. How many bales did you handle there and compress after that?

A. Some 12000 bales.

Q. Did you make anything on those?

A. We evidently made something on those; I wish to emphasize what I said at first. I was requested by the treasurer to keep trace of the money transactions as they were presented there to the treasurer's bank, as up to that time they were inaccurate, simply because of the fact that they had not been properly looked after, *a* and at the time that that statement was made, it should have drawn out every dollar, to have been accurate, that the compress owed for material, and it developed afterwards that it did not pay, and that money for materials, I didn't know anything about, and it took the earnings and even a little more to pay the accrued bills that were not included in that statement, and the expenses accruing after that.

172 Q. Did you make a statement of this business subsequent to that time?

A I think there is still one matter——

Q. This includes the April business, this statement of April 1905 does it not?

A. It includes the entire statement of the company's business, as shown by my books which we kept in the manner described, and which were inaccurate, because there were matters which the treasurer had not reported to me. It was correct as my books showed. But I was not the manager of the business, and I had no more to do with the management of the business than the rest of the resident stockholders, because I had all and more than I wanted to do with the management of the cotton business.

Mr. KEATON: I will hand you, to be marked for identification the statement of January 31, 1905, and the second statement of April 18th, 1905.

The same are marked "Exhibit 8" and "Exhibit 9" for identification.

Q. Did you, when you sent this statement out to the stockholders, expect them to believe it and rely on it?

Objected to as incompetent, irrelevant and immaterial.

Mr. BLAKENEY: And I object specifically for Gulf Compress Company.

Overruled. Exception.

A. I believed they were correct and mailed them out as correct.

Q. You never gave the stockholders any different statements?

A. There was no very material different statement to make.

Q. Now what did this company charge, if you know during the season of 1904 and 5 for compressing?

A. That Judge is regulated by the railroads and my understanding is ten cents per hundred pounds.

173 Q. And no charges made directly to the shipper?

A. None except for what was called "patching."

Q. Yes, and bagging and so forth, where the press furnished the bagging.

A. Yes, where the compress furnished the bagging.

Q. Was there any charge made for any of those things where the shipper furnished the bagging?

A. My understanding is that the press put on the bagging when the shipper furnished it.

Q. And they charge about ten cents a bale?

A. Ten cents a hundred is what the railroad pays.

Q. Per hundred, I mean. And that was on that schedule of charges when the press made that $7300 that season?

A. That was the best season we ever had.

Q. Now you say that you, in your efforts to take care of some of this indebtedness, drew drafts on some of the stockholders, or all of them?

A. I drew drafts pro rate per share on each stockholder, and my recollection now is that that was for the purpose of carrying out our agreement with Mr. Webb to pay his interest.

Q. Now is it not a fact that there was a three per cent. assessment made which was authorized sometime earlier in the season of 1904?

A. That assessment was made a full year ago for a specific purpose passed upon by the stockholders at their first meeting, to pay the accrued interest on the Webb note; that was all paid.

Q. Well, later, you conceived the idea of making another three per cent assessment?

A. That was nearly a year later.

Q. Now then, if the first one was made a year ago——

A. That was when the new stockholders first came in; we had to pay up the interest, it was about May, 1904.

174 Q. —Well, that is only a little over a year ago.

A. Well, this other one was only made about six months ago. There was a space there of eight or ten months between the two.

Q. Was not the second one made or attempted to be made by you in August, 1904?

A. August, 1904, well if the record so shows, probably it is. I am speaking from recollection, but it was for two entirely distinct purposes.

Q. That is all the drafts that you ever drew on those stockholders, is it not?

A. Yes sir.

Q. Now that other three per cent. that you call an assessment——

A. —I don't know that it was three per cent.; it was about that though.

Q. Now look at this and see if this is one of your letters concerning that matter. (Handing witness paper.)

A. Yes, that is the time; I was speaking from recollection.

Q. Now you attempt there, or state that you assess the stock 3% again?

A. Yes sir.

Q. Now you had not had any meeting of the stockholders or anyone else, to make that assessment had you?

A. I think my letter states that we had not had.

(The letter referred to is marked "Exhibit 10.")

Q. Did you receive a reply to that letter? (Referring to Ex. 10, same being a letter from witness to B. L. Anderson, dated Aug. 9, '04.)

A. Yes sir.

Q. Have you got it here?

A. It is among the files I presume; I remember the substance of it; I wish to state that it is my recollection that that was not an assessment, but that the company was going to borrow it from each stockholder.

175 Q. I will get you to examine this copy and state if this is the reply that you got from Neil P. Anderson & Co.?

A. This is the letter, I could have almost quoted it, and you will see that it refers to the loan,—the offer to borrow from each stockholder.

Mr. KEATON: Now, I offer this copy; he says that is it.

(The same is marked "Exhibit 11" and a copy of the same is hereto attached and made a part of this record.)

Exhibit 10 is also offered in evidence by the plaintiff, and being admitted, a copy of the same is hereto attached and made a part hereof.

Q. Now you stated that these parties refused to do anything to help take care of this indebtedness, I believe?

A. I stated that at the stockholders' meeting it was fully discussed, and I was directed to proceed to try to arrange it as I had suggested.

Q. The stockholders' meeting, when?

A. On the 24th of April.

Mr. BLAKENEY: If the court please I would like permission to withdraw this witness in order to ask Mr. Aydelotte a few questions. Permission being granted, this witness is excused and

J. M. AYDELOTTE, having been first duly sworn, testifies as follows:

By Mr. BLAKENEY:

Q. Mr. Aydelotte, you live in Shawnee, do you?

A. Yes sir.

Q. And for several years prior to the time this lease was made, you have been president of the Shawnee Compress Company?

A. Yes sir.

Q. How long were you connected with it?

A. I was connected with it, I think it was about 1900 up until last April.

Q. During all of that time were you president?

176 A. All except the first year, W. S. Search was president the first year and he resigned.

Q. Were you familiar with the earnings and expenditures of the compress company during the time you were president?

A. Only as they submitted me statements?

Q. You mean by that that you did not actively manage it yourself?

A. No sir.

Q. You attended the stockholders' meeting and the directors' meetings did you?

A. Part of the time, yes sir.

Q. During the four years that you were connected with it, did the compress company earn anything?

A. Yes, it earned a little money each year.

Q. How much?

Mr. KEATON: Objected to as incompetent.

Overruled. Exception.

A. In the year 1903 I think it earned about $5000.

Q. Net or gross?

A. Net. The season of 1903 and 4.

Q. What did it earn the preceding year?

A. And the season of 1902 and 3, I think, *I think* it was $4300.

Q. What was its condition with reference to being able to pay this indebtedness?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. Well, they had no funds in hand to pay the notes that they owed the Webb Compress Company.

Q. Did they not each year make an overdraft at the Shawnee National.

A. —I was going to tell you, Mr. Douglas and myself were stockholders of the bank, and paid the notes for the company as they came due, until one was due in the fall of 1904——

Q. What was done with that?

A. Well, it wasn't paid, we didn't pay it; I don't know whether it has been paid today or not.

177 Q. At the time that you resigned as president, you also ceased to be a stockholder, did you?

A. Yes sir, a few days after that.

Q. Now about that time what was the condition of the compress company, with reference to being pressed by its creditors or not?

A. It was pressed at one time by the Webb Compress Co. for the $2250 note, and they took the matter up with them and they extended the time.

Q. Well, that all matured in May 1905, did it not?

A. I a*n*i't quite sure about that.

Q. Well, the Shawnee National Bank were they insisting or not on their money?

A. Yes, sir.

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

Q. What had they been doing with reference to trying to get their money?

Same objection. Overruled. Exception.

A. They were urging the stockholders to make some disposition and pay the note as soon as possible; they never did crowd them or threaten to bring suit or anything. We urged them to make arrangements to pay it as soon as possible; that we needed the money and did not care to carry it longer.

Q. Did not you and Mr. Douglas, as officers of the bank, refuse to pay their checks, and allow some of them to go to protest?

A. There were some few checks that I remember that were not paid—but they were not protested, I don't think,—two checks, I think. But those two checks afterwards were paid as soon as Mr. Shaw collected the money from the railroad that was owing the compress company, and deposited it in the bank.

Q. They were afterwards paid by the manager of the compress, were they?

A. Yes sir.

Q. Mr. Shaw was the manager?

A. Yes.

178 Q. But their current accounts were running behind all the time were they not, Mr. Aydelotte?

Mr. KEATON: Objected to as asking for a conclusion and leading. Objection sustained.

Q. Mr. Douglas was looking after the bank——

A. He was looking after the bank, yes; I was not actively in the bank, only at the directors' meetings.

Q. Now don't you know that garnishees were served on the moneys of the company?

A. Not to my knowledge, no sir.

Q. You do not know that the Oklahoma National Bank garnisheed the moneys of the company that the railroads had?

A. No sir.

Q. Now at the time that you sold your stock, did you know as a stockholder, that some disposition would have to be made of the plant in order to raise the money to meet these necessary expenses and the liabilities that had matured?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial, and asking the witness for a conclusion and an opinion and as leading and suggestive.

Sustained.

Q. State the condition of that company at the time you sold your stock?

Objected to as incompetent.

Overruled. Exception.

The COURT: If you know?

A. Why I can't tell you just exactly in dollars and cents how much it was; I can tell you approximately.

Q. Go ahead?

A. I think they owed the Webb Compress Co. about $11,000, and they owed the bank I think about $7000 in round figures,—about $18,000.

Q. Did you know about the employés, whether they had been paid up or not?

A. Well, I would not say as to that, Mr. Shaw, the superintendent——

179 Q. At that time, what means did the compress company have to meet these outstanding liabilities, what practical way?

A. Why the only way that they got any funds was when they compressed cotton for the shippers.

Q. Cotton pressing had been done for that season hadn't it?

A. Well, practically it was over, but that was the only way that they had to get money. The railroads paid them ten cents per hundred pounds.

Q. Just state what means the company had in April at the time you sold your stock to meet this outstanding indebtedness?

Mr. KEATON: Objected to as incompetent, and not the best evidence and as a repetition.

The COURT: It strikes me that the books would be the best evidence of what the indebtedness is. (Discussion.)

Q. You know Mr. Burney Anderson?

A. Yes sir.

Q. B. L. Anderson, is the way he stands of record. Did you have a conversation with him some time in April about his buying this press?

A. Yes sir.

Q. What did he say?

A. He and Frank Anderson were over at Shawnee and they approached me with reference to buying the press, and he wanted to know what we wanted for it, and I told him that we were asking $35,000 for it, and he said that he could not pay th.. money for it, it wasn't worth it——

Mr. KEATON: We object to all this as incompetent.

Overruled. Plaintiff- excepts.

A. —and he asked me how much stock I thought he could get, and I told him that he could buy the controlling interest in it, and I told him that I did not know but that I could see what stock could be bought and let him know; and he and Frank Anderson went to the press to look over it; and they asked me to meet him at the depot, that he wanted to go to Oklahoma City, and I
180 meet him at the depot, and he made an offer standing on the steps as you go up to the Rock Island Depot, of 14 cents a share, and I told him I would not consider it or submit it to the stockholders.

Q. Prior to that time he had offered $25000 for it hadn't he?

A. He offered $25,000 prior to that, yes sir.

Cross-examination.

By Judge KEATON:

Q. Now when you were talking to Mr. Burney Anderson, both you and he were talking about the management of the plant, weren't you?

A. We were talking about the management of the plant, and that it didn't seem to be managed as it should have been, and I told him that I would look into it and see where the trouble was as much as possible, and that it cost more money to press cotton under the conditions in which they handled it at Shawnee, than it should cost if the press was located and handled as it should be.

Q. Well, that was the matter that you had under discussion at the — that you had this conversation.

A. Yes sir.

Q. Now do you know whether or not Mr. Burney Anderson and

Mr. Frank Anderson had been invited over here to make the proposition?

A. Not to my knowledge, no sir.

Q. You do not know whether Mr. Douglas wrote them to come?

A. No sir, not to my knowledge, he did not.

Redirect examination.

By Mr. BLAKENEY:

Q. Mr. Aydelotte, the complaint was about the location of the press and the buildings, and the expense of getting the cotton to and from it, was it not?

A. That seemed to be the main trouble, yes; they had to dray it from the Santa Fe road, and they had to dray it to and from the M. K. & T. road.

181 Q. Who had been managing it up to that time?

A. Mr. Shaw.

Q. And Mr. Beatty had nothing to do with it?

A. Mr. Beatty was secretary and Mr. Shaw was given charge of the press to operate.

Q. Was not there some complaint as to the manner in which the officers or the men in charge operated it?

A. Well, they were complaining of Mr. Shaw as superintendent of the press.

Q. Well, didn't you join them and say that you thought that he was losing too much money?

A. Yes sir.

Q. And Mr. Beatty and Mr. Stubbs also complained?

A. Mr. Beatty and Mr. Stubbs and all the stockholders complained of it.

F. B. REED is the next witness called to the stand by the defendant and gives the following testimony under oath:

By Mr. BLAKENEY:

Q. Mr. Reed, you are the cashier of the Oklahoma National Bank, are you not?

A. Yes sir.

Q. And C. J. Benson is one of the stockholders of the Shawnee Compress Company, and is president of the bank, is he?

A. Yes sir.

Q. Where is Mr. Benson now?

A. He is in Montana.

Q. Do you know when he will be home?

A. Some time I presume from the 25th to the 30th.

Q. Do you know anything about some checks being protested in 1901, of the Shawnee Compress Company.

A. The checks were not protested, they were presented for payment. The checks came to me in the general business of the day. Mr. Bass presented both checks, there was two, the amounts I believe were $135; those checks had been paid right along and I supposed

they were good, but when they were presented at the Shawnee
182 National they were turned down, and I called up Mr. Bass and told him; and Mr. Benson came up the next day——

Q. Well, you had an action prosecuted, did you, to recover on them?

A. Yes sir.

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

Q. Where was the action prosecuted, in what court?

Same objection.

Sustained.

Q. Do you know what court the action was prosecuted in?

A. I do not.

Q. Do you know whether a garnishee was issued in the action—of the railroad company, for moneys they had——?

—Objection.

Sustained.

Q. Do you know what the checks were given for?

A. Only what Mr. Bass said,—given for salaries.

Q. Given to men who worked at the compress?

A. Yes sir.

Q. Do you know something about the business of the compress, do you, during the last three or 4 years?

A. Not much.

Q. Do you know whether or not they have been earning anything?

Objected to.

Withdrawn.

Cross-examination.

By Mr. KEATON.

Q. Mr. Benson, is also a stockholder and is now an officer of this compress company is he?

A. I think so.

Q. And was at that time?

A. Yes sir.

Q. Now those checks were finally paid, were they not?

A. Yes sir.

Q. And they were not paid through a judgment in court, but were paid by——

A. Yes sir, they were paid.

Q. Do you know whether or not they were paid before that
183 case you were talking about went to judgment?

A. Mr. Crossan paid it to us,—our attorney.

Q. You don't know whether they went to judgment?

A. No, I don't know.

Mr. KEATON: I want to ask Mr. Aydelotte one question.

Whereupon Mr. AYDELOTTE is recalled and testifies as follows:

Q. Now Mr. Aydelotte, this indebtedness to the Webb Compress people was not any larger than it had been during all those years that the press had been running, and in fact it had been reduced some, had it not?

A. It had been reduced some.

Q. The aggregate indebtedness of the company was not as large in April, 1905, as it had been prior to that time?

A. No sir.

By Mr. BLAKENEY:

Q. Mr. Aydelotte, this indebtedness was paid in installments, was it not?

A. Yes sir.

—. The installment for the year 1904 was extended, was it not?

A. Yes sir.

Q. Don't you know that it was extended upon condition, as stated by Mr. Webb in his letter, that they would pay it all in 1905, when it all matured?

A. No, I could not say as to that.

5:40 P. M. Court here adjourns until 9 o'clock Monday morning.

9 A. M., MONDAY, *Sept.* 18, 1905.

Court convenes and the jury being polled and found to be all present, and all parties being present with their counsel, this case is resumed as follows:

W. H. BEATTY is recalled for further cross examination by the plaintiff, and gives the following testimony under oath:

By Mr. KEATON:

Mr. Beatty, you stated on Saturday,—I believe you stated,
184 that you had a conversation with Messrs. B. L. and ". E. Anderson, wherein you made the statement to them,—that you understood that they had offered $25000 for the plant; what in your opinion, was the plant worth at that time?

A. $35,000.

Q. Let's see, you were one of this company, a member of it, at the time that Neil P. Anderson and Anderson, Clayton & Co. bought stock in it, were you not?

A. At the time that they bought the stock, I don't think that I was even a stockholder; we bought the stock almost simultaneously; I was not an officer.

Q. Did you go to see them about purchasing stock in the company?

A. I did.

Q. Where did you go?

A. Fort Worth.

Q. Did you own stock in the company at the time you went to see them?

A. I had bought some stock; I won't be positive that we had the stock delivered. I had bought some non-resident stock from some parties in Texas; there was a delay in the transfer of the stock.

Q. Do you know what representations you made to them to induce them to buy stock in the company?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.

Sustained. Exception.

Q. I will ask you whether or not you wrote to them at that time, to Mr. Neil B. Anderson, or to B. L. Anderson, or both of them, that you, or you and Mr. Stubbs would own one third of the stock, and that you wanted them to buy a third and that Mr. Nelson would own a third, and that each of the three interests would be represented by a director on the board, and that the management of the corporation in that way, would be, in your opinion, made profitable to all parties, as you were all engaged in buying cotton?

185 Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial and not cross examination.

Sustained. Plaintiff excepts.

Q. I believe you stated that the money which Mr. Hanson, or the Gulf Compress Company advanced on your stock in the company was paid to the Shawnee National Bank?

A. I stated so.

Q. That was $7500, the whole of that?

A. The money that was borrowed on the stock was paid to the Shawnee National Bank on the 133 shares of stock which they held as collateral for the loan.

Q. Did not they hold the additional 133 shares until Mr. Hanson made this advance,—or the Gulf Compress Co. made it?

A. They had held that, yes.

Q. For you and Mr. Stubbs; now this $6000 that the Gulf Compress Co. advanced, that went to the Shawnee National Bank to pay for the second mortgage?

A. For the second mortgage; that mortgage was held by the Gulf Company.

Q. Do you know whether a new mortgage was executed to the Gulf Compress Co., or was the old note held by the bank simply transfered?

A. My recollection is that, temporarily, at least, they simply took up the old papers; as to whether a second paper has been executed, I don't know.

Q. You claim to be secretary of the company yet?

A. Yes sir.

Q. You ought to know whether a second mortgage has been executed to the Gulf Compress Co. or not.

186 A. My impression is that the mortgage has been executed—that the mortgage has been executed; I know there was a delay; they first took up the old mortgage with the under-

standing that they would execute a new one; I think that has been done.

Q. When, if you know, was the new note and mortgage executed?

Mr. Woods: Objected to.

Overruled.

A. I won't be positive; I could not swear.

Q. You have got all the minutes of the company here, haven't you, kept by yourself?

A. There has been no minute made of that; there has been an entry on the book.

Q. Well, doesn't the entry on the book show when it was done?

A. If made, the entry on the books would show; there are no bookkeeping entries made in the last two months; I have been out of town two months.

Q. Well, is this was executed at all, it was executed before the annual stockholders' meeting, wasn't it?

(No answer.)

Q. The note then on the face of the record is simply the old note transferred, drawing the same 12% interest as the old mortgage?

A. If there has been any new note executed, it has been done recently.

Q. Well, if that was a part of the agreement for this lease that should be done, the new note and second mortgage executed drawing 8% interest, why was it not done?

Mr. Blakeney: I want to object to this examination as incompetent.

(Discussion.)

A. The discussion between the attorneys refreshed my memory; the paper has never been executed.

Q. Yes, but I say why has it not?

A. Because of the Court proceedings.

Q. Mr. Beatty, I will ask you whether you notified any-
187 body else, as directors of this company, to attend the directors' meeting which you called or assumed to call for April 26th and May 1st, 1905 other than Mr. Stubbs and Mr. F. E. Anderson?

A. I notified those three that were directors.

Q. That is, yourself, Mr. Stubbs and Mr. Anderson?

A. Yes sir.

Q. You had had a board, or your company had, of nine directors prior to the meeting of the stockholders on April 24th, 1905, had you not?

A. That is true, and it was set forth in the resolution making the change.

Q. Well, who were those directors, do you know?

A. All of the stockholders were directors.

Mr. Keaton: That is all.

Redirect examination.

By Mr. BLAKENEY:

Q. All of those stockholders that were directors had sold their stock except Messrs. Beatty, Stubbs, Anderson and Benson, had they not, when the change was made?

A. And J. E. Portis.

Q. And all of the parties but Portis who were still stockholders of the company prior to April 24th, attended at that meeting, did they not?

A. Except Aydelotte, he was there by proxy.

Q. He attended by proxy?

A. He attended by proxy.

Q. Well, all of the stockholders except J. E. Portis, who were directors attended either in person or by proxy at the stockholders' meeting on April 24th, didn't they?

A. That is true, except H. T. Douglas; he had a small block of stock, he wasn't present; the two absentees were Portis and Douglas.

Q. Did you notify those two parties?

A. Yes sir.

Q. Do you know the signatures of Mr. Portis and Mr. Douglas?

188 A. Yes sir, I do. Those are the signatures.

Q. Are these the signatures (handing witness paper)?

A. Yes sir.

Said paper is here marked for identification "Exhibit 12."

Q. Mr. Beatty, why did you reduce the directorship *for* 12 or 9 members to three?

Objected to as incompetent, irrelevant and immaterial.
Overruled. Exception.

A. The reduction of the number was necessary because we did not have nine stockholders, primarily; and secondly, we had made enquiry——

(Here the Court suspends the proceedings for a moment.)

Q. The charter only says three directors, doesn't it?

Objected to as incompetent, irrelevant and immaterial.

Q. Did you receive this telegram from Mr. Grimes (handing him telegram dated April 23rd, 1905)?

A. This is a telegram handed to me by Mr. C. J. Benson at my request. This telegram was received by him in that matter.

Said telegram is here marked "Exhibit 13."

Q. At any rate the motive which you had in reducing the directorship was because you understood the law to be that you were entitled to only three directors under your charter, was it not?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

Q. And that had been your advice from your attorneys?

Objected to as incompetent and hearsay.
Overruled. Except.

A. Well, it was because our attorney had advised us——

Mr. KEATON: Wait; we object to that and move to strike it out as incompetent, irrelevant and immaterial and not the best evidence.
Overruled. Exception.

Q. Did Mr. Anderson act as a director, after that election in April?

A. He did.

Mr. KEATON: Objected to as incompetent.

Q. What did he do, acting as a director after that?

189 Same objection.
Overruled. Plaintiff- excepts.

A. The first thing he did was,—the first thing to be done after the directors' meeting, was to employ an auditor to examine and check up and make a report of the superintendent's and secretary's books.

Q. Did you advise him of the meeting held on April 25th, of the action of the committee of which he was appointed a member?

A. I did.

Q. How did you advise him?

A. I advised him by wire,—telegram.

Q. Did you receive any answer from him?

A. Yes sir, I received a reply.

Q. (Handing witness.) I will ask you to examine that and state if it is the reply you received?

A. The telegram was sent to C. J. Benson from Anderson, in reply to one sent by C. J. Benson and W. H. Beatty; this was the reply handed to me.

The same is here marked "Exhibit 14."

Q. How was the telegram signed which you sent to Anderson to which this was the reply?

A. Benson and Beatty, or W. H. Beatty and C. J. Benson; the two names were signed to it and in my presence Mr. Benson sent an additional telephone message to Mr. Anderson.

Q. Did you hear the conversation between them?

A. I heard one end of it; Mr. Benson told me what it was.

Q. Do you know when the telegram sent by Beatty and Benson or by W. H. Beatty and C. J. Benson was received by F. E. Anderson; have you any receipt or evidence of the time that it was received by him?

A. To be sure that Mr. Anderson received the message in time I had the Western Union Telegraph Co. send a service message; this is the service message returned showing the delivery of the
190 message in question at 1:40 P. M. to F. E. Anderson in person (referring to another paper handed to him).

Q. You don't mean 1:40 do you; well it shows for itself.

Mr. BLAKENEY: Here we offer for identification Exhibit 15 (the telegram referred to).

Q. Now who did Mr. Anderson select as that expert authorized by the minutes,—who did he appoint?

A. He selected a gentleman who had been discussed between us, Mr. Wamby of Oklahoma City, whom he said he knew was an accurate and proper man.

Q. Now after the new board of directors qualified,—the board of three—who was elected as president?

A. T. F. Stubbs.

Q. And who for Vice President?

A. F. E. Anderson is my recollection, the minutes will show.

Q. I will ask you to examine that and state whether or not—You know Mr. Anderson's signature?

A. Yes sir, that is a letter that I received relative to the employment by Mr. Anderson of the auditor?

The same is marked "Exhibit 16."

Q. Mr. Beatty, in taking up the matter of the Webb indebtedness, how did you do it, by correspondence or personally?

A. The matter was by correspondence, the recent matter,—since this year.

Q. I will ask you to examine that and state whether or not this is a letter from Mr. Webb of the Webb Press Company, Lim.?

A. That is a letter a copy of which has been furnished to the parties at their request.

The same is Marked "Exhibit 17."

Q. You know Mr. Webb's signature, do you?

A. Yes sir, I know his signature; that is his signature.

Q. The Andersons were present at the meeting of the
191 stockholders held on the 24th of April, were they?

A. They were both present.

Q. Both participated in the meeting, did they?

A. They did.

Q. Mr. Beatty, you stated that you borrowed $7500 from Mr. Hanson why did you make the loan from him, or desire to make it?

A. Because I wanted the money first, and because I could get it cheaper than in Shawnee, second.

Q. Had you made arrangements so that you could get the money?

A. I had been promised it at the Shawnee National Bank at 12%.

Q When was the money paid you by Mr. Hanson?

A. Some months after,—about the latter part of May, is my recollection.

Q. At that time had you an opportunity of procuring that money from other parties in the east at the same rate?

A. I had negotiated by private conversation with other parties in the east, but had made no definite arrangements.

Recross-examination.

By Mr. KEATON:

Q. Now Mr. Beatty you had some letters and correspondence from the Webb Compress Co. prior to this letter of April 29th 1905, didn't you, with reference to the extension of your company's indebtedness to them?

A. That date was April 29th?

Q. Yes sir?

A. I have two or three copies of it.

Q. I know, but have you got the originals now, so that I can get them?

A. I think probably I have.

Q. I would like to see them.

(Witness produces papers.)

A. That is my entire Webb file. A copy of all of those letters I think have been furnished.

Q. Well, probably we have; we could not find them.

192 Mr. BLAKENEY: You are secretary Mr. Beatty.

A. Yes.

Mr. BLAKENEY: Is that letter a part of the files of the secretary's office?

A. Yes sir.

The same is marked "Exhibit 18."

Mr. BLAKENEY: I offer this letter in evidence from Mr. Benson to Mr. Douglas, it is part of the files, Mr. Benson explaining why he can't be present.

We object to it as incompetent, irrelevant and immaterial; it is away back in 1903.

Objection to Exhibit 18 sustained.

Mr. BLAKENEY: We except to the ruling of the court.

By Mr. KEATON:

Mr. KEATON: I offer for identification to be marked, letter from the Webb Compress Co. to W. H. Beatty, dated Feb. 2, 1905, (marked "Exhibit 19") and also a letter from the Webb Compress Co., to the Shawnee Compress Co., dated Feb. 16, 1905. (Marked "Exhibit 20.") And also a letter from W. H. Beatty, secretary, to the Webb Compress Co. dated February 23, 1905, (marked "Exhibit 21"). And also a letter from the Webb Com. Co. to W. H. Beatty, secretary of the Shawnee Com. Co., dated March 17, 1905. (Marked "Exhibit 22.")

By Mr. BLAKENEY:

Q. Mr. Beatty, is this one of the letters which you received, May 24th?

A. This is one of the letters.

The same is marked "Exhibit 23."

Now, we offer in evidence, if the Court please, Exhibit 17, that is the one of April 29th, from the Webb Com. Co. to Beatty.

Mr. KEATON: To which we object as incompetent, irrelevant and immaterial, it was after the stockholders' meeting or alleged stockholders' meeting of April 24th, 1905, and after the committee and alleged officers attempted to execute the lease in question.

Objection sustained. To which the defendant, by Mr.
193 Blakeney, excepts.

Mr. BLAKENEY: We offer Exhibit 23, May 24th, 1905.

Mr. KEATON: We object to it on the same grounds, and for the further reason that this letter was written after this action had been commenced.

(The Court examines same, which is from the Webb Com. Co. to the Shaw. Com. Co.)

The COURT: Has this interest been paid, Mr. Beatty?

A. Not yet.

The COURT: Objection overruled. Exhibit 23 will be admitted. To which admission the plaintiff- excepts by Mr. Keaton.

A copy of the same letter is hereto attached, marked "Exhibit 23" and made a part of this record.

Mr. BLAKENEY: We now offer in evidence "Exhibit 14," a telegram from F. E. Anderson to C. J. Benson, dated April 25th, 1905.

The COURT: Let it be admitted.

A copy of the same is hereto attached and made a part of this record, marked "Exhibit 14."

Mr. BLAKENEY: I offer the service message of the same date, marked "Exhibit 15."

(No objection to either of above.)

The COURT: It will be admitted.

A Copy of the same is hereto attached, marked as above and made a part of this record.

Mr. BLAKENEY: Now we offer the telegram from William Grimes. (Ex. 13, dated Apr. 23, '05.)

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

—and not the original telegram and not the real signature of the party.

Overruled. Exc.

A copy of the same is hereto attached, marked Ex. 13, and made a part hereof.

Mr. BLAKENEY: We offer Ex. 12, the waiver signed by Douglas & Portis.

Obj. to as last abv. Overruled. Exc. Same hereto at-
194 tached.

Mr. BLAKENEY: I want to introduce "Exhibit 20" (this is one that you identified.)

(No objection.)

A copy of the same is hereto attached, marked as above and made a part hereof. (Dated Feb. 16, '05.)

Mr. BLAKENEY: I offer "Exhibit 16." (Letter from Beatty to Anderson dated Apr. 28, '05.)

Mr. KEATON: I would like to ask the witness one question before this is admitted. Mr. Beatty, that word "directors" following the word "Stockholders" in parenthesis, was written by you, was it not?

Mr. BLAKENEY: Yes, we admit that.

Mr. KEATON: With that exception, it may be admitted.

A copy of the same is hereto attached, marked "Exhibit 16 and made a part hereof.

Mr. KEATON: We offer in evidence Exhibit 21, a letter from Mr. Beatty to the Webb Compress Co.

The same being admitted, a copy is hereto attached and made a part hereof, marked as above.

Mr. KEATON: We also offer "Exhibit 19," a letter from the Webb Compress Co. to W. H. Beatty.

A copy of the same is hereto attached, and made a part hereof, marked as above.

Mr. KEATON: And we also offer "Exhibit 22, a letter from Robt. D. Webb, Sec'y to W. H. Beatty, Sec'y of the Shawnee Compress Company.

A copy of the same is hereto attached, marked as indicated and made a part hereof.

Mr. BLAKENEY: Was the stock all paid up, Mr. Beatty, that was issued by this corporation,—is it fully paid up stock?

A. Yes sir.

By Mr. BLAKENEY:

195 Q. Were you able at any time, you or the firm of Beatty & Stubbs, able at any time to pay your assessment upon that stock?

A. We were not.

Q. Have assessments been made for the purpose of paying this outstanding and pressing indebtedness?

A. Yes, but they were not paid.

By Mr. KEATON:

Mr. KEATON:

Q. Now Mr. Beatty, you mean by saying that this was paid up, that the par value of the stock had been paid?

A. So it was represented to me and so I believed.

Q. They had paid in the actual par value?

A. I have only had the books for about 15 months——

Q. You did not pay par?

A. It was not worth par.

Q. Don't you know that there was not over $12000 or $12500 cash paid into that company for stock?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.

A. I do not know.

Q. Let's see, this is one of your statements while you were connected with that Company, is it not?

A. No sir, I was in no way connected with the company at that time, but was trying to become so, and had this statement made for me, so that I could see the Andersons——

Q. You signed it down at the botton, didn't you?

A. If I signed it, I signed it "Beatty."

Q. Now this is what you went in on?

A. Yes sir.

Q. Now this shows $24753.15, paid in on capital stock, didn't it, as against $19381 indebtedness?

A. That was a system of bookkeeping that Mr. Anderson and myself could not reconcile; we looked on the plant as worth so much money and—I don't think that is an intelligent statement; Mr. Burney Anderson, I think, agreed on that point.

Q. Now at that time the face value of the stock of the com-
196 pany was $5,000, was it not?

A. Yes sir.

Q. At the time that statement was made?

A. And the basis upon which we formed our valuation of stock was that the assets of the company was so much and that its debts were so much, and that the stock was therefore worth so much.

Q. Well, but this statement, you are the bookkeeper now, you know that when they put the liabilities and charged up the stock, they put the stock at the value that has been paid for it——

A. Provided they keep the books correctly.

Q. Well, you have no reason to believe that they made the statement incorrectly——.

A. —I have no reason to believe that the books are as you state they are——

Q. You say that you have never been able financially, you or your firm of Beatty and Stubbs, to pay the assessment on your stock?

A. I didn't state that.

Q. Well, what did you state to Mr.——

A. I said that since the first of January I had not been in a position to pay.

Q. Were you in a position before the first?

A. I was.

Q. Well, how is it that you were able to buy the additional 133 shares of stock and pay for it, and yet were not able to pay any assessment on the stock you already owned?

A. Well, I could offer the stock that I was buying as collateral, and could borrow the money to pay for it.

Q. Well you then could borrow the entire purchase price of the stock, and put that stock up as collateral for the money?

A. Yes sir, I could have done it in Shawnee, Oklahoma, where the press was located.

(Said statement is Marked Exhibit 24.)

Mr. KEATON: We offer this statement in evidence.
197 The COURT: It will be admitted. That is all.
A copy of said statement (Ex. 24) is hereto attached and made a part hereof.
Mr. BLAKENEY: That is all, Mr. Beatty.

B. L. ANDERSON is the next witness called to the stand by the defendant, and gives the following testimony under oath (sworn by the court):

By Mr. BLAKENEY:

Q. You are a member of the firm of Neil P. Anderson & Co. are you?
A. Yes sir.
Q. You have acted as the agent for that firm in all the transactions connected with the stock of the Shawnee Compress Co.
A. Yes sir.
Q. Were you in Oklahoma City on April 25, 1905?
A. Yes sir.
Q. Do you remember sending a telegram to Mr. C. C. Hanson on that date, at Shawnee?
A. Yes sir.
Q. At the same time did you send a telegram to him en route on the train?
A. I did.
Q. Care of the conductor on the west bound train?
A. I did.
Q. Are these the telegrams or copies of the telegrams that you sent? (handing witness.)
A. They seem to be.

Mr. BLAKENEY: I ask to have marked as an exhibit the telegram of April 25th from B. L. Anderson to Mr. Hanson at Shawnee, and the telegram from him to Mr. Hanson, care of the conductor of the same date, for identification.
Same are marked Exhibit 25 and Exhibit 26.
Mr. BLAKENEY: That is all.
Mr. KEATON: That is all.
Mr. BLAKENEY: We offer exhibit 25 in evidence.
Mr. KEATON: We object to it as incompetent, irrelevant and immaterial, and not the best evidence.
Mr. BLAKENEY: Well, I will withdraw the offer, because I have offered proof. Mr. Nelson, come around and take the stand.

198 A. E. NELSON, having first been sworn, testifies in behalf of the defendant as follows:

By Mr. BLAKENEY:

Q. Where do you live, Mr. Nelson?
A. In Shawnee.
Q. How long have you lived there?
A. Eight years.

Q. Have you during any of that time been connected with the Shawnee Compress Co.?
A. I have.
Q. When were you first connected with it?
A. In 1888, I think.
Q. '88 or '98?
A. '98.
Q. Were you one of the charter members of the organization?
A. I was.
Q. Have you, during all of that time, up until April 1905, continued as a stockholder of that corporation?
A. I am not sure with regard to the dates you give, but I was a stockholder up until recently, some time this year.
Q. Were you a director during most of the time?
A. I was all the time.
Q. Mr. Nelson, were you acquainted with the financial condition and the business and the management of that corporation during the time you were connected with it?
A. Yes sir.
Q. You may now commence and give the court a statement of the management of that corporation, financial management, from its incipiency until you sold out; how much capital did you start in with?
A. We were capitalized in the beginning at $11,000.
Q. What kind of a plant did you buy at that time?
A. We bought a second hand compress.
Q. What kind of a compress?
A. A Tyler compress.
Q. A second hand Tyler compress?
A. Yes sir.
199 Q. What was its condition as to being able to bale the cotton?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.
Overruled.

A. Why the press was not a satisfactory press, it did not do well.
Q. How long did you operate it and could you operate it?
A. We operated it two years.
Q. What did you do with it, what did you then do?
A. Eventually sold it and bought a new press from the Webb Press Company.
Q. Do you know what you paid for the new press, the contract price?
A. Twenty two thousand dollars and the old press, for the new press.
Q. How did you make the payment of $22,000, or how were you to make the payments?
A. They were to be made semi-annually, I believe.
Q. In what amounts?
A. $2250.00 each I believe.
Q. How were those future payments represented or evidenced?

A. I don't understand.
Q. Well, did you give notes and mortgages?
A. Oh, we gave a first mortgage on the plant and notes bearing interest.
Q. Well, were you able to meet those semi-annual notes as they matured?
A. Not all of them.
Q. You stayed in you say until 1905?
A. Yes sir.
Q. Mr. Nelson, how much did you pay on that indebtedness up to the time that you were in there?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and not the best evidence.
Overruled. Exception.

A. I could not answer that question, the records should show that.
Q. How did the indebtedness to the Shawnee National Bank arise?

Same objection.
Overruled. Exception.

A. Why the indebtedness to the bank arose in this way:
200 the bank took up the Webb indebtedness to the extent of the indebtedness to the bank.
Q. Now if the bank indebtedness was for the amount taken up with the Webb indebtedness, and the bank and the Webb indebtedness amounted to $18,000 during the six or seven years it had been operated, there had only been $4,000 actually paid on the Webb indebtedness, had there not?

Mr. KEATON: Objected to as asking for a computation.
(Ques. withdrawn.)

Q. Do you know about what amount of the indebtedness was taken up by the Shawnee National Bank?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and to the competency of the witness.
Overruled. Plaintiff- excepts.

A. About eight thousand dollars.
Q. And you don't know at the time you went out the amount that you were owing Webb, did you?
A. In the neighborhood of $11,000, I think.
Q. Had the Shawnee Compress Company been able at any time to pay any dividends?
Q. I have never gotten any.
Q. Did it ever declare any while you were a stockholder in that corporation?
A. No sir.

Mr. BLAKENEY: That is all.

Cross-examination.

By Mr. KEATON:

Q. Do you mean to say by that that the company did not make any earnings over and above the expenses?

A. I mean, Judge, that there was no dividends declared.

Q. You don't know what the net earnings of the company were?

A. If there had have been any earnings they would have been paid or used in the form of dividends.

Q. Except to pay your indebtedness to these parties. Do
201 you know what the indebtedness to the Shawnee National Bank was at the time it was taken up by the Gulf Compress Co.?

A. No sir, I don't know.

Q. You do not know the exact indebtedness to the Webb people at that time?

A. No sir.

Q. Mr. Nelson, do you remember of a meeting of the stockholders on or about the 24th of April of this year?

A. There was a meeting in the spring; I don't remember the date.

Q. Do you remember of meeting Mr. B. L. and F. M. Anderson on a certain date when they were over there to attend a meeting of the stockholders?

A. Yes sir.

Q. You had a conversation with them about the meeting or they spoke about it to you, didn't they?

A. Something in that line, yes sir.

Q. Were you a stockholder at that time?

A. No I guess I was not.

Q. Well, so far as you knew at the time you thought you were; in other words, if you were not a stockholder at the time, you didn't know that your stock had been disposed of, did you?

Mr. BLAKENEY: Objected to as incompetent, irrelevant, and immaterial and not proper cross examination.

Overruled. Defendant- excepts.

A. I had no notice at that time that it had been disposed of.

Q. Where was your stock; where did you put it, or where was it being kept at that time?

A. It was hypothecated to the Shawnee National Bank.

Q. Hypothecated as collateral security?

A. Yes sir.

Q. How many shares of stock did you own?

A. 133 shares (133 shares).

Mr. BLAKENEY: Mr. Nelson, you say your stock was in the Shawnee National Bank?

A. Yes sir.

Mr. BLAKENEY: What was it doing there,—hypothecated
202 as security for indebtedness?

A. Yes.

By Mr. BLAKENEY:

Q. Did you authorize Mr. Douglas, the president of that bank, to sell it?

A. Yes sir.

Q. How long before that, or how frequently had you authorized him to do it?

Mr. KEATON: We want to know, if the Court please whether that authorization was in writing.

Overruled. Exception.

A. Yes, I do.

The COURT: Well how long before?

Q. How long before had you first authorized him to sell it?

A. Let me ask a question now; there *is* two propositions here——

The COURT: Well, you told Mr. Douglas that he could sell your stock, did you?

A. I did.

The COURT: Now when did you first tell him that he could sell it?

A. I told him in 1900.

Q. In 1900?

A. Yes.

Q. Did you not urge him to sell it, Mr. Nelson?

Mr. KEATON: Objected to as incompetent, and asking for a conclusion.

Sustained. Defendant excepts.

Q. Well, did you subsequently to that, instruct him to sell it? Did you continue that instruction from time to time?

A. Yes sir.

Q. Now, were those instructions given him verbally or in writing?

A. Oral instructions, verbal.

Mr. KEATON: We object to the oral instructions.

Overruled. Exception.

A. I instructed him verbally to sell the stock.

Q. All the instructions that you gave him up till April 1905 were verbal, were they?

A. Yes sir.

Q. About how many times did you have a conversation
203 directing and urging him to sell.

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. I can't answer that question.

Q. I say, about?

A. Oh, there was a matter of indebtedness between Mr. Douglas and myself, and I asked him to make a disposition of the stock any time he could.

Q. You had other collateral up as security with the stock, didn't you?

A. Yes sir.

Q. And the disposition of it was satisfactory with you was it not?
A. It was.

By Mr. KEATON:

Q. Now, Mr. Nelson, is it not a fact that in April, 1905, whatever authority he had was in writing?
A. He did take a written authority to sell the stock, yes, Mr. Douglas did I presume.
Q. Well, it was not a written authority to sell, but simply a written bond to buy was it not?
A. Well, I didn't consider it that way; he was authorized to dispose of the stock.

Mr. KEATON: We move to strike out all the testimony of the witness as to the authorization of Mr. Douglas to sell the stock or dispose of it, for the reason that whatever authority he had was in writing; and this is not the best evidence.
Motion overruled: Plaintiff excepts.

Mr. BLAKENEY: Did you ever revoke the verbal authority you had given him?

Objected to.
Sustained.

Mr. BLAKENEY: Did you ever verbally revoke any of the authority that you had given him to sell the stock?

Objected to.
(No answer.)

C. C. HANSON is here recalled by the defendant, and testifies as follows, under oath:—

204 By Mr. BLAKENEY:

Q. Mr. Hanson, when was the first time that you came to the city of Shawnee, in connection with the Shawnee Compress Co. matter?
A. In the latter part of April of this year.
Q. At that time did you know the Andersons or any of them?
A. Very well, both of them.
Q. Did you have any conversation with Mr. B. L. Anderson prior to the time that you came to Shawnee?
A. I was in Austin, Texas, in March and was discussing the Shawnee Compress situation and discovered that he was interested.
Q. State the conversation that you had about it?

Objected to as incompetent.
Overruled.

A. I met Mr. Anderson there in Austin, Texas, in the latter part of March, and I discovered that he was interested in the Shawnee Compress Company, and I referred to the dissatisfaction that was mentioned here Saturday, and I suggested that the property

should be turned over to us under a lease, to let us operate it as we did at Oklahoma City——

Q. What dissatisfaction did you mention to him?

A. Such dissatisfaction as I had heard of, of the management of the property. And Mr. Anderson said that "those matters will soon be adjusted as I have a man in Shawnee looking after it now."

Q. Did he tell you who that man was?

A. No sir.

Q. Did you see Mr. Anderson any further until you executed the lease?

A. No sir, I did not. When Mr. Beatty, the secretary of the company, called at Memphis to see me, we discussed the matters about which I testified Saturday. I then wrote Mr. Anderson that Mr. Beatty had been over and that he had had up with me the matters relating to the Shawnee Compress Company's property.

Q. Did you receive any telegrams then from Mr. Anderson relating to the matter?

205 A. That was before I made the lease offer, because I thought that it was a courtesy to write him after that conversation that I had already had with him; and along for a few days after that letter was written I didn't know how far apart we were. I received an occasional telegram from Mr. Anderson to know when I was going out west.

Q. Where were those telegrams sent from?

A. I don't remember, I could tell you where they reached me. I remember one reached me at Atlanta, and one in Memphis, and one in St. Louis; they were all answered. And later I made the lease proposition; and the night I left Memphis for Shawnee I wrote Mr. Anderson that I was on my way to Shawnee and Oklahoma City, and that I would be glad to see him while I was out in this section——

Mr. KEATON: Of course, that is not competent as to those matters.

Mr. BLAKENEY: Well, I don't care about that.

Q. Did you receive any documents then from Mr. Anderson as you were coming to Shawnee or while you were out there?

A. While I was there I received a telegram from B. L. Anderson.

Q. Is that the telegram?

—. Yes sir.

Q. That is the original handed to you is it?

A. Yes sir, on the train. (Ref. to ex. 26.)

Q. After you reached Shawnee did you receive a telegram?

A. I did, and this is the telegram I received after I arrived in Shawnee from Mr. Anderson. (Ref. to ex. 25.)

Q. After you reached Shawnee, did you have a conversation with Mr. Anderson, and if so, state the circumstances of it?

A. At Mr. Anderson's request my secretary and myself met him on the train at 4 o'clock that afternoon, Mr. Anderson discussed with me, first, these telegrams, these two that he had sent. He said that he had hesitated to send those telegrams for fear that I might mis-

understand; that he meant every word and sentence con-
206 tained in them, and that he had not meant to be impolite or discourteous, but to emphasize that he meant what he said, and after finishing, with his hands on the document, he asked me if I had traded for the Shawnee Compress, and I told him no, that I had only seen the president; that the president had told me that they had had a stockholders meeting the day before, and that a committee had been appointed to confer with me that afternoon, that I was hesitating to see that committee until after Mr. Anderson had arrived and conferred with me. He then said, "that being the case, I'll go over there. You have not traded. And he discussed with me the irregularity of the stockholders' meeting, and his own contention here.

Q. Well, what else did he say about it; what did he say about the lease, or the condition of the property and so forth?

A. (Witness refers to notes.) After he finished discussing the irregularities of the directors' meeting, or the stockholders' meeting, I asked Mr. Anderson what he wanted me to do, and he replied "Withdraw your lease offer," and I asked him why he wanted me to withdraw that lease offer; and he referred to a conversation that he had had with me in Memphis wherein he was about to close for the Oklahoma Press, and all at once I stepped in and offered more for the plant than it was worth and got it. He referred further to our conversation in Texas, wherein he stated that he had a man in Shawnee adjusting affairs, and to the effect, as he said "This is our Territory and you ought to keep out of it."

Q. What did he say about this man adjusting affairs,—just tell us what he said about it?

A. I asked Mr. Anderson, why he didn't tell me in Texas that he was,—No, he stated furthe that he was undertaking to get control of the Shawnee property; and then I asked Mr. Anderson why he did
not tell me in Austin Texas, that he was after the property,
207 and why he did not tell me when I wrote him the letter about the conference with Mr. Beatty, and that he wanted the property; that my company had no desire to butt in where it was not wanted; that if I had have known that his interests were after the press, I should have hesitated until I could have had another conference with him——

Q. What did he say about his interests being after the press?

A. He said that he had had a man in Shawnee trying to get the press off and on for the past 30 days.

Q. Did he say anything in that conversation to the effect that the press would have to sell or lease, and that he wanted to buy it?

Objected to by Mr. Keaton for plaintiff.

Q. Just state anything else that was said; I want all the conversation?

A. I explained to Mr. Anderson that I could not withdraw my offer immediately; that I had made it in good faith; that I had tried to be fair with him, that the stockholders had met; that the committee had been appointed to confer with me; and I suggested that if he wanted the compress that he raise my lease offer; that I would

not pay a cent more than $6,000 for the property; and he stated that he did not want to lease the property, that he wanted to buy it.

Q. Did he say anything about its financial condition?

Mr. KEATON: Objected to as incompetent.

Overruled.

Mr. KEATON: The compress' financial condition?

Mr. BLAKENEY: Yes.

Mr. KEATON: We except.

Q. Now did he say anything about its financial condition?

A. Yes, he discussed with me the financial condition.

Q. What did he say?

A. If you will let me tell this in my own way, I will tell it as it happened, and we will get it all in.

The COURT: Go ahead.

A. He said he did not want to lease but buy it, and I suggested that he get busy and buy; and he discussed with me, of
208 course, the effect of my lease offer, I believe he said that it had bulled the market for the stock, because we figured that at the expiration of the lease the stock would be worth 100 cents on the dollar and the plant out of debt.

Q. Was that all now that was said in that conversation?

A. This conversation between Mr. Anderson and myself lasted about an hour, my auditor being present; I told him that I had no intention of interfering in this section or with any of his business in the matter of creating unnecessary competition, and I told him that I would confer with my counsel regarding the irregularities of the stockholders meeting; that I was not after a lawsuit, and that unless the Shawnee Compress Co. accepted my offer, or unless they could make a straight and clean delivery of the property to my company, I should withdraw from the town. At about six o'clock I went to your office and we had a meeting, and at 6 o'clock I met Mr. Anderson again, and told him that the matters were being investigated, but that it would be some time the next day before I could say anything definite to him.

Q. Did you see him again and have another talk with him?

A. I told Mr. Anderson of our proposition to take up—at the six o'clock meeting, now,—I told Mr. Anderson of our proposition to take up the second mortgage at 8% and carry it until the compress company could pay it off in connection with the first mortgage. I told Mr. Anderson that Mr. Beatty, of Beatty and Stubbs, had stated to me that they had had a hard season, and that they wanted to realize some money on their stock, and I asked him for his idea regarding the value of that stock, as they were negotiating with me for a loan, and he told me that he didn't think it was worth over 15 cents, and that it would be worth nothing under the action stated in the telegram, and he advised me to let it alone,—to let the stock alone, and I discussed the matter very friendly with Mr. Anderson,—B. L. Anderson,—regarding the stock. Mr. Anderson
209 introduced to me Mr. Phillips, and when the train left Mr. Phillips looked me up——

Q. Did Mr. Anderson leave on the train?
A. Yes sir.
Q. Did he tell you what Mr. Phillips was doing for him in connection with this company?

Objected to as incompetent.

A. No sir.
Q. Did Mr. Phillips?

Mr. KEATON: We object to any conversation with Mr. Phillips.
Mr. BLAKENEY: I want to ask leave of the court to introduce this conversation while he is on the stand.

A. As Mr. Anderson was leaving he desired to know if I would be in Oklahoma City the next day, and that if I would he would wait over to see me, and I told him that I would get on the next train, and I failed to do that but caught the 6 o'clock train. And I saw Mr. Anderson in Oklahoma City the next day, and the first thing he wanted to know was if we had traded, and I told him that the committee had accepted my offer; that I had met the officers of the company and we had agreed upon the lease contract if approved by my counsel and by the counsel for the Shawnee Compress Co. He then gave me a discription of the warm competition I was going to have as referred to in those telegrams. I asked Mr. Anderson why this occasioned such competition; we were invited to come over here——

Q. I think Mr. Hanson that we wont pursue the conversation any further now.

A. I will just tell you what you want to know; I don't desire to go any further.

Q. Did Mr. Anderson, in this conversation, say anything about putting in a compress in Shawnee?

A. He said that if we leased the Compress at Shawnee, his
210 company would put in a compress at Oklahoma City and Shawnee, and he reasoned with me that we would make some money to let the Shawnee situation alone by baling at Oklahoma City without competition than we would if we took both properties; just one other thing that occurs to me; I told Mr. Anderson that I thought that he had lost out at both places, because they were demanding more than he was willing to give. Then we drifted back to the idea of what we would take for the properties——

The COURT: I don't see how this is relevant.
Mr. BLAKENEY: No, that is all; that is all, Mr. Hanson.

Cross-examination.

By Mr. KEATON:

Q. Now you know as a matter of fact Mr. Hanson, that one of the members of the company of which Mr. B. L. Anderson was an officer, did attempt to procure railroad facilities for a compress at Shawnee?

Objected to.

A. I don't know it of my own personal knowledge.

Objection Sustained.

Q. As a matter of fact your company and its influence with the railroad companies prevented them from getting any trackage or switching facilities either at Oklahoma City or at Shawnee, did it not?

A. It did not.

Q. Did your company or you as an officer of the company, or any of the officers to your knowledge, interfere or make any representations or statements to any of the railroad companies for the purpose of preventing it.

A. I did not.

Q. Nothing at all?

A. Not for the purpose of preventing it.

Q. Well, for what purpose, what representations did they make?

Mr. BLAKENEY: Objected to.

Overruled. Exception.

211 Q. What statements or representations did they make to any of the railroad companies,—say, first, entering Shawnee?

A. Did who make?

Q. Your officers or the officers of your company, or any of them?

A. No statements were made for the purpose of preventing——

Q. Well, what representations did they make with reference to the matter of the Trader's Compress Company Building?

A. I probably have discussed form time to time the situation just as I have stated it here, with the railroad people, when I came in contact with them.

Q. Yes. Did you state to them that you desired that they keep the shippers or the Trader's compress company from getting railroad facilities, or that they would not do it?

A. I expressed no wish in the premises.

Q. You did not desire it——

Mr. BLAKENEY: Objected to as incompetent, and immaterial.

Objection sustained.

Q. What officers of what company did you discuss this matter with Mr. Hanson?

A. I don't remember the names, the superintendent of the Rock Island, was one, over at Oklahoma City, the next day——

Q. What conversation did you have with him?

A. In effect, just what I said.

Q. Just what you recounted to him?

A. Stated the situation just as I saw it and understood it.

Q. Why did you go to him and have a conversation at all about it?

A. I didn't go to him; I incident-ly met him at the passenger depot about 15 or 20 minutes before the train left, and discussed the different matters mentioned with——

Q. — Now did you discuss this matter with any other companies?

A. Probably some of the commercial agents and I have been talking about it, probably.

212 Q. Of what companies?

Mr. BLAKENEY: Don't say "probably." If you have had such conversations, say so.

A. Well, I have had conversations with several of them, just as I have told it here.

Q. Now when you had a conversation with Mr. Anderson at Austin, Texas, did he not state to you there that, as a stockholder of the Shawnee Company, he did not want you to lease it?

A. No sir, he said that that was a nice business and that he would have to give the matter some thought, and then led off to our turning over the Oklahoma City press to him.

Q. He didn't say anything about it one way or the other?

A. He said that those matters that were going on, wrong or right——

Q. — The matters which you and he referred to as going wrong, was the manner in which the compress was being or had been managed by the parties in charge of it, wasn't it?

A. Yes, I knew nothing about its financial status or anything else.

Q. When did you find out about its financial status?

A. When I saw Mr. Beatty in Memphis, that was my first intimation.

That is all.

Redirect examination.

By Mr. BLAKENEY:

Q. After seeing Mr. Anderson in Shawnee did you understand then that he was referring in Texas to the things that you adjusted then in Shawnee,—that he had referred to in Texas, when he said that he had a man there?

A. No sir, I didn't understand Mr. Anderson there in Texas; that he was going to buy the compress.

Q. Well, in the light of the subsequent conversation that is what you understood, wasn't it?

Objected to. Sustained.

Q. Did he in either of those conversations tell you that

213 Mr. Phillips was the man that he had in Shawnee?

Objected to as incompetent, and immaterial.

A. No sir.

Q. You said that you had had conversations with officers of railroads in which you recounted this matter; do you mean to say that you recounted the fact that you had leased the press or that you were making an effort to keep the Andersons out of Shawnee?

A. No sir, only,—I desire to amend my answer to the question; I remember a conversation that I had with Mr. (?) Booters of the Frisco, that I didn't recall just now——

Q. — Well, in any of those conversations did you say anything about Mr. Anderson buying a new press and your desire to keep him out?

A. I did not.

Mr. KEATON: Did not you tell him of the fact of what Mr. Anderson had told you, that he intended to build a new press?

A. I did, I showed him what we were up against.

Mr. KEATON: Don't you know Mr. Hanson that these same officials with whom you had these conversations absolutely refused to furnish the company represented by Mr. Anderson, any railroad facilities?

A. I do not; I have never heard it in any shape, form or fashion.

W. H. BEATTY is here recalled by the defendant and gives the following testimony:—

By Mr. BLAKENEY:

Q. Mr. Beatty, did you have a conversation with Mr. Anderson about wanting to buy this compress at Shawnee, and what the stock was worth and so forth?

A. Yes sir, I had a conversation with Mr. B. L. and Frank Anderson jointly, that was at the stockholders' meeting on April 24th, and I had a conversation with Mr. Neil P. Anderson something about a week after the stockholders' meeting.

Q. What, if anything, did he say about his offer to buy, Burney and Frank Anderson, first——

214 Objected to as a repetition.
Sustained.

Q. What did Mr. Neil P. Anderson say?

A. In asking me that question, I want to state, that the statement made by Mr. Neil P. Anderson in my hearing, my being there at that meeting I stated Saturday that that was a question that Mr. B. L. Anderson asked me, the conversations occurring there close together, and speaking from memory; I should have said that that was a question asked by Mr. Neil P. Anderson——

The COURT: I think you gentlemen are losing sight of the real issue here on both sides; I don't think this is a question of whether these gentlemen wanted to buy or wanted to operate that plant, or anything of that kind. (Discussion.)

Q. Mr. Beatty, did you have a conversation with Mr. F. E. and Burney Anderson at the depot, on Union Ave. Street, in which they made you an offer for the stock and you made them a counter offer?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and as having been gone over.

Sustained.

Q. Did you have a conversation with the Andersons in which they said anything about putting in another press there at Shawnee?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial, and indefinite, and all these conversations have been gone over.

Sustained.

Q. Did you have a conversation with Mr. B. L. Anderson in Shawnee about the 24th of April, 1905, in which he said anything about, if the compress did not sell to him, that he would put in another press in Shawnee?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. My conversation with Mr. Burney Anderson——

Q. Did you have substantially that conversation?

A. I had a conversation to that effect.

215 Q. Now, just state that conversation?

Mr. KEATON: Same objection, and as having been gone over.

Overruled. Exception.

A. My conversation with Mr. B. L. Anderson, in which Mr. F. E. Anderson was present, was to the effect that——

Mr. KEATON: Well, give the language if you can.

A. I asked Mr. Anderson, if he would agree not to erect a press in Shawnee for the next five years if we would not agree to lease; he says, "No." I says, "Well you agree not to erect a press within the next 12 months if we agree not to lease," and he says, "We will not," and I said, "Well, I am certainly going to lease this press."

Q. Could a cotton press owned by three cotton operators operate a press as successfully as a compress operated by independent parties?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial, and to the competency of the witness.

Overruled. Exception.

A. It has been demonstrated that we cannot for the reason that we have lost at least 15,000 bales this year, by reason of the conspiracies of Lesser-Goldman and Company, and Wolf and Company, two that I can recall——

Q. This friction came up, what time during the season, the first or last part of the season?

A. Well, it came up during the season, I don't remember.

The COURT: I don't see how this tends to prove a conspiracy. (Discussion.)

Q. Mr. Beatty, if the compress company should operate this compress this year would it encounter the same rivalries and jealousies that it encountered the latter part of last season, between other cotton buyers?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and speculative.

Sustained.

That is all.

216 Cross-examination.

By Mr. KEATON:

Q. Now Mr. Beatty, last year you know, as a matter of fact, that Mr. Lesser was a large stockholder in the compress at South McAlester, and shipped his cotton to his own compress?

A. He would always have done that, I guess.

Q. Now, don't you know as a matter of fact that the reason that Wolf and Company didn't go there was because they claimed that the management was rotten, and that they had been short-potted on weights?

A. No sir, I don't know for certain that they had a trouble about their weights.

Q. Don't you know that as far as any objection to the minority stockholders was concerned, or being against his taking his cotton there, it was rather an inducement for them to take their cotton there.

A. I don't think that the Anderson interests or the Beatty & Stubbs interests, or the Nelson interests had any direct influence upon Wolf; the claim against the compress company for short weights was very properly denied; it had been proven that their claim was incorrect.

Q. Then as a matter of fact, if they were stockholders in another company and they wanted to ship to their own company, instead of its being a detriment to the press to have buyers of cotton interested, it is rather an advantage because they will take their cotton to a press that they have an interest in, won't they?

A. As far as the shippers are able to protect the press they are a protection to it, but when those cotton buyers bring about such a feeling between them and other cotton buyers as this did, such as to cause them to take their cotton elsewhere, then they are a detriment to it——

Q. But that never occurred here?

217 A. It did occur here and we lost 15000 bales.

Q. On account of their ownership of that press was Wolf & Co.'s cotton diverted, do you know?

A. I don't know——

Objected to as incompetent.

Overruled. Exception.

Q. Do you know how much cotton the firm of Neil P. Anderson & Co.,—how many bales went into that press last year?

A. About 6,000 bales I think.

Q. Do you know how much cotton the firm of Anderson, Clayton & Co. turned into it?

A. The two turned in between ten and twelve thousand.

Q. And the whole of the business was about 50,000?

A. Fifty-five I think.

Q. How much did your firm turn into it?

A. Now less than 20,000.

Q. Do you know how much Nelson turned into it?

A. I think Nelson's firm and our firm turned in,—I know it was over thirty thousand.

Q. Do you know what officer Mr. B. L. Anderson held in the Traders' or shippers compress company?

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.

Overruled.

A. I only know that Mr. B. L. Anderson told me that he had active charge of 20 presses.

Q. I didn't ask you for that at all; I asked you if you knew what office he had?

A. I do not know.

Q. Then you should answer that. *Q.* Now when did he tell you that he owned over 20 presses,—managed them?

A. He told me that the first visit that I had at Fort Worth, and he offered some very good suggestions, as I thought at that time, and still think, relative to a system of accounting and so forth.

218 Q. Don't you know as a matter of fact that all the companies that Mr. Anderson is connected with do not own to exceed 14 presses?

A. No sir; I don't know that.

Q. Now don't you know as a matter of fact that Mr. Anderson could not promise you anything as to what he would do, or the Traders Co. would do, unless he was a majority stockholder?

Objected to as argumentative.

Sustained.

Redirect examination.

By Mr. BLAKENEY:

Q. Mr. Anderson directed the Compress at Pauls Valley this year did he not?

Objected to.

Sustained.

Q. Mr. Beatty, is Pauls Valley connected with Shawnee by railroad?

A. Yes sir.

Q. What railroads?

A. The Santa Fe.

Q. Is the Shawnee Compress Company so located that you could receive the cotton from Pauls Valley to Shawnee for pressing purposes?

A. It was last year and it is so located.

Q. Would the compress erected at Pauls Valley be inimical to the compress at Shawnee?

A. It would be a direct competitor.

Q. Now I will ask you if the Anderson interests,—the defendants in this case—have erected a compress at Pauls Valley?

A. Mr. B. L. Anderson stated to the stockholders on April 24th

when the matter was under discussion, that his people were erecting a compress in Pauls Valley, but that they didn't intend to run it.

Mr. BLAKENEY: I want to offer now these two documents, Exhibits 25 and 26.

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and not the best evidence.

Overruled & Pl'ffs Except.

219 A copy of the same (telegrams received by Hanson from Anderson) are hereto attached, marked as stated, and made a part of this record.

T. F. STUBBS is the next witness called to the stand, who after being duly sworn testifies as follows on behalf of the defendant:—

Mr. J. H. WOODS:

Q. Where do you live?
A. Shawnee.
Q. How long have you lived there?
A. Two years.
Q. What is your business?
A. The cotton business.
Q. What connection, if any, have you had with the Shawnee Compress Company?
A. Well, I have had stock in it and been an officer.
Q. Have you been in a situation to know about its financial condition?
A. Yes sir.
Q. Tell the court what it has been during that time, in your own way?

Mr. KEATON: Objected to as incompetent.
Overruled. Except-.

A. Why the company has been embarrassed very much all the time.
Q. In what way?
A. Why it could not make its expenses; it could not pay its labor; it now owes the watchman ninety odd dollars——

Mr. KEATON: We object to all this as incompetent and not the best evidence.
Overruled. Exception.

A. —Well, it owes three of the employés now. It owes the superintendent about $75; it owes the engineer about $90 and the watchman the same.
Q. Why don't the books show those things?
A. Well, those things that came up since, they made no charges on them and no entries.
Q. As a matter of fact these items don't show on the secretary's books until they are paid, isn't that true?

220 A. Yes sir.
Q. What do you know about the Empire Compress Company?

A. Well, we owe the Empire $75 past due.

Q. What do you know about the condition of the indebtedness to the Shawnee National Bank up to the time this list was made?

A. It was threatening all the time to foreclose; it was past due; I understand that they were corresponding with various cotton men trying to sell it.

Q. State whether or not the bank was pressing for payment?

A. The bank was insisting on it.

Q. Which one of the officers was insisting on payment?

A. Mr. Douglas, the president.

Q. Do you recollect about it being renewed last year, being in default this and renewed, and on what condition it was renewed?

A. Why is was renewed without any specified time.

Q. Well, what did you do about endeavoring to pay this indebtednes-?

A. Why we endeavored to look about and see how we could do it.

Q. Well were you able to meet that indebtedness or to make any arrangements to meet it,—did you try?

A. We made arrangements.

Q. Well, how, in connection with this lease?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial, and to the competency of the witness.

The COURT: What do you know about it personally. He is asking you about this lease; do you know about the negotiations?

A. Certainly I do.

Q. And the borrowing of this money personally?

A. Certainly I do.

Q. Well, go ahead?

A. I said I most certainly did.

The COURT: Well, go ahead and state what you did?

221 A. Well, we had these communications with Mr. Hanson and we finally prevailed on him to take care of this $6000 at the bank.

Mr. KEATON: We object to that.

The COURT: Yes, what was said?

Mr. KEATON: Were you present at the conversation with him?

A. One conversation, yes, I wasn't present in Memphis, but I was present in Shawnee.

The COURT: Well, what did he say?

A. Well, he agreed to do it; he said that he would do it.

Q. Mr. Stubbs, did you have any other means or did the compress company have any means of raising the funds to pay this indebtedness to the Shawnee National Bank, other than by getting the money on this lease?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial, and to the competency of the witness.

Overruled.

A. We did not.

Q. Did you know of any other source from which you could get it?

Same objection as last above.

A. There was no possible source.

Q. In what situation were you with reference to the carrying on and conducting of the business of the company this year, with reference to arranging with the railroad company, in connection with their part of the pressing business, as to bonds and so forth?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. We were perfectly incompetent to make arrangements with them.

Q. What arrangements were required to be made with the railroad company in order to successfully conduct the business?

Same objetcion as last above.

Overruled. Exception.

The COURT: Answer the question; what arrangements were necessary to make with the railroad company?

222 A. I don't know about that; that is a matter of adjustment.

Q. How much bonds was it last year?

A. They required it last year——

Q. How do you know they required it this year?

A. I guess we were informed so.

The COURT: By whom?

A. By one of the Santa Fe officials.

The COURT: Who was it?

A. I think it was Mr. Nelson.

The COURT: What bond did he say would be required?

A. He didn't state; they were complaining all the time last year.

Mr. WOODS: State whether or not you were able to give the bond that they required last year?

Q. We were not able to give any bond, and some of the stockholders objected to it, I believe.

Q. State whether or not they insisted upon a bond last year?

A. They did insist.

Q. Who talked to the railroad about it, or wrote about it?

A. I think they got a letter from them.

Q. Did anyone call on you on behalf of the railroad with reference to giving the bond that you spoke of?

A. I don't remember; I think so.

Q. Who was president of the compress company last year?

A. Mr. Aydelotte.

Q. Do you recollect his calling attention to the fact that the railroad company was demanding a bond?

Mr. KEATON: Objected to as incompetent.

Sustained.

Cross-examination.

By Mr. KEATON:

Q. Now Mr. Stubbs, isn't this the whole trouble about the Santa Fe asking that bond this year, growing out of the fact that the agent was claiming that they lost something on the weights?

A. They did not, not that I know of.

223 Q. That they had some cotton in there and their weights came back short?

A. No sir, they claimed that they lost some cotton.

Q. Were you in charge of the compress down there, actually managing it?

A. I was not, no sir.

Q. Do you know of any officer of the company that did have anything to do with the management of it?

A. Why there was an executive committee appointed to look after it; Mr. Beatty, and Mr. Nelson and Mr. F. E. Anderson.

Q. They didn't stay there and endeavor to look after it, did they?

A. No, they just——

Q. —Were you an officer of the company last year?

A. No.

Q. You were just a stockholder?

A. A stockholder.

Q. —and director?

A. (No answer.)

Mr. KEATON: That is all.

W. H. BEATTY is hereupon recalled for further examination by the defense, and gives the following testimony under oath:

By Mr. BLAKENEY:

Q. To identify the minutes——

The COURT: I suppose it will be admitted that these are the minutes?

Mr. KEATON: Up to the first of May we will admit that the minutes are there but they are not always correct.

Q. Mr. Beatty, you are secretary of the Shawnee Compress Co. are you?

A. Yes sir.

Q. Do you keep the minutes of the meetings of the corporation?

A. I do.

Q. Stockholders and directors both?

A. Yes sir.

Q. You have a book that you keep them in, have you?

A. This is the book (producing book).

Q. Commencing at April 24th at the stockholders' meet-

224 ing on that day, where are the minutes of that meeting found?

A. Pages 50 to 52 inclusive.

Q. The meeting of the directors for that date, where are they recorded?

A. On page 52, the directors' meeting of the 24th of April.

Mr. BLAKENEY: We offer here the minutes of the corporation—of the meeting of the 24th of April, the stockholders' meeting.

Mr. KEATON: Well, we will object to those minutes in the two respects that they show the election of the directors by ballot, and that Messrs. — voted on the question of the election of the directors; it shows there that they are incorrect.

Objection overruled. Plaintiff excepts.

Whereupon said minutes of April 24, 1905, found on pages 50 to 52 inclusive of said books, are admitted in evidence, and a copy of the same is hereto attached, marked Exhibit —.

The COURT: Did they vote for the election of directors in that meeting, the Andersons?

A. I claim that they voted.

Q. Well, did they?

A. They did vote. I wish the court would let me state there what we did. The directors were nominated by resolution, and on that resolution we voted; I wrote that resolution out, "by ballot," and we didn't ballot.

Q. The resolution stated on its face that they voted, and they didn't vote?

A. Yes sir, that is the only mistake made.

Q. Did anyone demand a ballot?

A. No.

Mr. BLAKENEY: Now I offer the minutes of the directors' meeting of April 24th.

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial, for the reason that these parties had no authority to
225 act as directors.

Overruled. Exception.

A copy of which said minutes of the directors' meeting held on April 24th, 1905, is hereto attached, marked Exhibit — and made a part of this record. (Found on page 52.)

Q. When did they have another directors' meeting?

A. Two days following, on the 26th of April.

Q. W-ere are the minutes of that meeting found?

A. On page 53.

Mr. BLAKENEY: We offer the minutes of the directors' meeting on April 26th.

Mr. KEATON: Counsel for the plaintiffs object, for the reason that the parties absolutely had no authority to act as directors.

Overruled. Exception.

Q. Mr. Beatty, at the meeting of the directors on the 24th of April,—J. M. Aydelotte, who prior to that had been acting as president, filed his resignation, did he not?

A. The resignation was in my hands prior to that; he had filed it

prior to that, but it was presented and filed and accepted as a part of the minutes of that meeting, and is found on Page 52.

A copy of the minutes of said directors' meeting held on April 26th, 1905, and found on page 53 of said minute book, is hereto attached and made a part hereof.

Q. Now, did you have another directors' meeting?
A. We had a directors' meeting on May 1st, found on pages 54 and 55.

Mr. BLAKENEY: We offer the minutes of the directors' meeting found on pages 54 and 55 in evidence.
Mr. KEATON: Counsel for the plaintiff object to it as incompetent, irrelevant and immaterial, for the reason that the parties assuming to act as directors had no authority to act as a board of directors.
Overruled. Exception.

A copy of which said minutes of said meeting of said di-
226 rectors found on pages 54 and 55, is hereto attached and made a part hereof.

Q. Did you have any other meeting?
A. Yes sir, we had another meeting of stockholders on the 6th of June.
Q. Where are those minutes found.
A. On page 58, the stockholders' meeting of June 6th.
Q. Did you have any other meeting?
A. The meeting of June 6th was adjourned and we met on June 20th.

Mr. BLAKENEY: I offer the minutes of the meeting of June 6th found on page 58.
Mr. KEATON: Objected to as incompetent, for the reason that the meeting was held long subsequent to the commencement of this action.
Overruled. Exception.
Mr. BLAKENEY: And we offer the minutes of the adjourned meeting of June 20th, and found on page 60 of said book.
Mr. KEATON: Objected to as incompetent, and for the reason that that was long subsequent to the execution of the pretended lease, and of the commencement of this action to enjoin it?
Objection overruled. Exception.

A copy of said minutes of said two meetings of June 6th and of June 20th, contained on pages 58 and 60 of said book, is hereto attached and made a part of this record.

Q. At the directors' meeting of April 24th, was the resignation of J. M. Aydelotte presented?
A. His resignation was *accepted* and unanimously accepted.
Q. Did Mr. Burney and F. E. Anderson still insist on acting as directors after that?
A. No sir, they were present when that election occurred. Mr. Benson said, "that let's us out," I remember that remark.

Q. The directors' meeting occurred immediately after the stockholders' meeting, did it?

227 A. Yes sir.

Q. And Mr. Burney and Mr. F. E. Anderson remained?

A. They were in the room, at the first meeting; they didn't remain.

Q. They knew that you were acting as directors, didn't they?

A. They knew that we were in session.

Q. Was any objection made by them to that?

A. None at all at that time.

Mr. BLAKENEY: You waive the reading of this do you?

Mr. KEATON: Yes.

Cross-examination.

By Mr. KEATON:

Q. Now at the meeting of your so-called board of directors on the 26th of April, 1905, nobody was present but yourself and Mr. Stubbs was there?

A. I think not; I think Mr. Anderson, didn't come down,—Frank Anderson.

Q. Now then at the meeting of May 1st, 1905, your minutes show that Mr. F. E. Anderson filed a written protest, have you got that protest in here anywhere?

A. I think it was filed; I thought up until now that it was in the book; I remember the protest being admitted and accepted.

Q. Now, do you say that Mr. F. E. Anderson took any further part in that meeting after filing the protest?

A. He acted as director in employing the auditor.

Q. Well, that was before the meeting of May 1st; after he filed the written protest on May 1st, he did not act any further, did he?

A. I remember that that was the principal thing that he did; I won't say that he did not act any further without looking at the minutes.

Q. Well, your memory about it is only just what the minutes show, isn't it?

228 A. I see that Mr. Anderson acted.

Q. Now you say that those minutes are correct, do you?

A. Yes sir.

Q. And yet he filed a protest against the powers of that board to act?

A. Yes sir. He acted and I will read his action if you like.

Q. Well, is that correct?

A. Yes, it is.

Q. Now, as a matter of fact, Neil P. Anderson went to see you shortly after the stockholders' meeting on April 24th, and you showed that the vote on the minutes for the lease had been carried unanimously, didn't you?

A. I did not, and I questioned with him that day, and tried to show him. I know that I had a memorandum showing that they voted,—the exact words that were used, and I filled it in the book in

his presence. I had it written before and he asked me if I had it written and I says "yes, I will put it in," and I took the paper that I had, and I wrote it into the minutes in his presence.

Q. Where is that paper?

A. I haven't got it.

Q. Why did you have that off on a separate piece of paper when the regular minutes were in there?

A. I will state exactly why I did it, by reading the minutes; I can state it when I look at the minutes; I know my minutes were incomplete to that extent, but they were not incorrect, and he asked me if I didn't have that vote, and I told him I had all my notes and he asked me to put it in, and I turned and took my notes and did it in his presence.

Q. Why did you write up the minutes of that meeting and leave that vote out?

A. Because I did not think and do not now consider that that specific vote was necessary; I might be wrong, but that was my reason.

Q. That is the way you keep minutes of meetings is it; you
229 leave out what you think is not neccessary?

Objected to as incompetent.

Sustained.

That is all.

Redirect examination.

By Mr. BLAKENEY:

Q. Mr. Beatty, at that meeting when Mr. Anderson filed that protest, you remember that I went down and submitted some resolutions afterwards, don't you?

A. In writing.

Q. And Mr. Anderson still continued with the board in session?

A. That is the way that I testified; he acted after that in that session, — he voted.

Q. You remember that he was interested in the business coming before that directors' meeting, don't you?

A. I do, and that he remained present.

Q. Mr. Beatty, did you make a bond to the Santa Fe railroad last year?

A. We did not.

Q. Had they demanded one. Have the Santa Fe been demanding execution of a bond this year?

Mr. KEATON: Objected to as incompetent, and not the best evidence and asking for a conclusion.

Sustained.

Q. Are there any letters about it, demanding a bond?

A. If it is about this season, I haven't been here in six or eight weeks, and I would not have seen it.

Q. You are the secretary are you not?

A. Yes sir.

Q. Don't letter- come to you addressed to the company?
A. They come to the compress company, sometimes I get them second handed.
Q. Well, do the railroads require bonds for the operation of a compress?

Objected to as incompetent, irrelevant and immaterial.
Overruled. Plaintiff excepts.

230 A. They do require bonds; the Choctaw R. R. Company gave us repeated trouble last year——

Objected.
Sustained.

Q. Were you able to make bond last year?

Same objection.
Overruled. Exception.

A. We were not.
Q. The railroad company forces you to make a bond does it?
A. The Choctaw road made repeated demands——

Mr. KEATON: We object to his statement as a conclusion.
Objection sustained.

Q. Just state what they did and who to,—Was it by correspondence?
A. The traffic department, by correspondence, and Mr. Aydelotte conducted it and showed it to me.
Q. Did you have any conversation with anybody about it?
A. I had a conversation with,—he called himself—the claim man.
Q. Mr. Beatty, did not the agent at Shawnee say to you or to the officers of the compress in your presence that they were not going to bill any more cotton out of that compress or through that compress unless you executed a bond, and didn't you have some trouble in getting the balance to agree to——

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial, leading and suggestive.
Sustained.

Q. Did you have any talk with a gentleman about it?

The COURT: Last year?
Mr. BLAKENEY: Yes.
Same objection by the plaintiffs.
Sustained.

Q. Is it a rule of the railroad companies operating in Shawnee to require a bond before they will issue bills of lading for cotton in compresses at Shawnee?
A. It is their rule.

Mr. KEATON: Objected to as incompetent.

A. It is a rule of the railroads to require it.

The COURT: In all cases?
A. Yes: I was going to state——
Q. —Never mind. Can you make such a bond this
231 year,—could the company make such a bond this year?
A. In my opinion, we could not.

Objected to as incompetent.
Overruled. Plaintiff excepts.

The COURT: Have you tried to make one?
A. We tried last year.
Q. Have you tried this year?
A. I have not tried this year.

Mr. BLAKENEY: Bonding companies are not operating in this country this year.

Recross examination.

By Mr. KEATON:

Q. Did you ever submit that question to a meeting of the board of directors of your company,—that is about making a bond, or to a stockholders' meeting, or ever notify them that you were having any trouble?
A. I know that the matter — submitted to us, but not at a formal meeting of the stockholders.
Q. By whom?
A. By Mr. Aydelotte.
Q. Well, was it submitted to any stockholders' meeting?
A. I stated that it was not submitted.
Q. When was it submitted to any members of the firm of Anderson, Clayton & Co., or to Neil P. Anderson and Co.?
A. Mr. Anderson wrote us and asked why we had not responded to his letter about a bond; B. L. Anderson wrote to know why we hadn't answered it. It is in Shawnee.
Q. About a bond, what bond?
A. About executing a bond to the railroad company,—the Choctaw.
Q. Didn't you write to him that you had not received such a letter?
A. I didn't have the matter up, Mr. Aydelotte did.
Q. Now do you mean to say that that is an unvarying rule that the railroad companies should require a bond, or that they have not a legal right to require one?
232 A. W-ll, the only compress that I ever was with before gave a bond.
Q. Don't you know that the railroads run no risk at all; that they have their agent there to kill it out—?
A. I do know that they run continual risk; they had to have their agent there.
Q. Well, they ought to, ought not they; that is a part of their duty?
A. No sir, no sir, it is not.

Q. Don't you know that if the compress said, "we don't propose to furnish a bond, and you have to take the cotton the same as any other freight," they would have to do it?

A. I do not.

Mr. Woods: Objected to as incompetent.

Sustained.

That is all.

Mr. Blakeney: That is our case.

Defendant rests.

In Chief.

Rebuttal.

H. B. Therman is the first witness called in rebuttal, and gives the following testimony under oath:—

By Mr. Keaton:

Q. Where do you reside?

A. In Shawnee, Oklahoma.

Q. What is your business and has been for the past year?

A. Cotton operating in Shawnee.

Q. In what capacity?

A. In handling, buying, for Wolf and Company.

Q. In what capacity.

A. Buying and selling cotton.

Q. Are you their agent there?

A. Well, I care for all the business in the district.

Q. Do you remember any trouble occurring there last compressing season, which resulted in your company delivering its cotton in that district tributary to Shawnee to some other company?

A. Yes, there was trouble.

Q. Do you know what the trouble was and what caused it?

Mr. Blakeney: Objected to as incompetent.

The Court: I will let him answer in view of the fact that
233 they brought it out.

Q. The question is, what was the reason?

The Court: I don't believe that this has anything to do with the case.

Q. W[illegible]t because of your rivalry or any difficulty arising out of the competition between them and yourselves that caused you to divert the cotton away from Shawnee?

A. No sir, that is not it,—the cause——

Mr. Blakeney: You have answered the question.

Q. Well, I want him to answer it, what was the cause.

Mr. Blakeney: Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. We diverted it to the other press because the business we had

had with that press was not satisfactory. The apparatus in which the cotton was weighed was not correct, and the company informed me that we would not concentrate there any further on that account.

Q. Did you have that matter up with anybody about the weights,—any of the officers of the compress company?

Objected to as incompetent, irrelevant and immaterial.
Overruled. Exception.

A. Yes sir, the matter was up with the officers, with the secretary of the compress company and with the president.

Q. Who were they?

A. Mr. Beatty was secretary of the company, and Mr. J. M. Aydelotte was president. I think that is all.

F. E. ANDERSON is hereupon recalled in rebuttal, and gives the following testimony under oath:—

By Mr. KEATON:

Q. You have heard the testimony and know what these minutes show here with reference to your participating in the meeting of the board of directors on May 1st, when you filed that written protest?

234 A. Yes sir.

Q. What, if any participation did you take after that?

A. I remained in the room; I don't recall taking any part in the proceedings.

Q. Did you read a resolution that day?

A. I don't think I took it in my hand and read it, no sir.

Q. Who brought that resolution into the meeting?

A. I don't recall exactly; I recollect Mr. Blakeney coming into the room sometime, but whether he brought it I don't know.

Q. Now you have heard the statement of Mr. Beatty to the effect that, in your presence he had a conversation with Mr. B. L. Anderson, in which he asked him that, if he would not lease the plant,—if the company would not lease the plant to the Gulf Compress Company, if he would agree that his company would not build a compress plant in Shawnee for five years, and that Mr. Anderson said "No," and that he then asked him if he would agree not to build for one year, if they would not lease it; did you hear any such conversation as that?

A. There was a conversation between the two men, but I didn't pay any particular attention to it, because I wasn't interested in it; I was standing on the other side of the room, and any details of it I have no recollection of hearing at all.

Q. You didn't hear any. I want to ask you now if you ever went to Shawnee at any time with Mr. B. L. Anderson when you talked of buying the press or buying stock in the press?

A. I did, yes sir.

Q. Do you know why you came up here?

A. Yes sir, I received a letter from Mr. H. T. Douglas requesting me to come over to discuss press matters with him.

Q. And after you got here what proposition came up?

A. Why, he stated that they desired to make some disposition of the compress matters, and that the bank was interested and that some of the stockholders, or some one interested were prepared to
235 make propositions.

Q. I will get you to examine that letter (handing him) and see if that is the letter you received from Mr. Douglas?

A. Yes sir, this is the letter.

The same is here marked "Exhibit 27."

Q. Now then, is that the only time you went there on that business?

A. Yes sir, I think that is the only visit.

Q. And when you got the letter did you know what the purpose of his consultation was?

A. No sir, I had never had a previous consultation with him about it, and I didn't know what his propositions were.

Q. Well, in pursuance of that conversation, did you submit any proposition to him?

Objected to.

Sustained.

Q. Well, did Mr. B. L. Anderson submit any proposition?

A. Yes sir.

Q. For buying the press or buying stock?

Mr. Woods: Objected to as calling for a conclusion.

The Court: What did the proposition have reference to?

A. The proposition was made on the basis of buying the press outright, if I recollect right; whether it was on a basis of stock values I don't recollect.

Q. Well, did Mr. Douglas write you another letter with reference to the same matter?

A. Yes sir.

Q. Now to refresh your recollection as to what was proposed about buying the compress stock, I will submit that letter to you (handing witness another letter).

A. Yes, I received this letter from him. (Marked "Exhibit 28.")

Q. Now what does that correspondence have reference to?

A. That letter has reference to stock, my stock,—our stock.

Q. You state that you had no further connection with the matter?

A. That is all.

236 Mr. Keaton: I offer these two exhibits in evidence. I offer first the letter from Douglas of March 3rd, 1905, to F. E. Anderson, and then the letter of April 14, 1905, to him; the first is Exhibit 27 and the next is Exhibit 28.

Copies of the same are hereto attached and made a part of this record, marked as above.

12 M. Here Court adjourned until 1:30 this afternoon.

2:00 same day. Court convenes pursuant to adjournment, and

all parties being present with their attorneys, and the same witness having been recalled the trial is proceeded with as follows:

Q. Have you any other letters or conversation with Mr. Douglas with reference to the purchasing of the compress or the stock?

A. Yes, following up our bid for the property, I called on Mr. Douglas a few days afterwards, and asked him what about the proposition, and he asked for an extension of time for about a week or such a matter, which I granted, and at the end of that time I went to Shawnee and called on him, and he stated that he was not able to give a definite reply at that time.

Mr. BLAKENEY: We object to that conversation——

Q. All right, let it go. Were you an officer or supposed to be an officer of this company at that time?

A. I was vice president elected at the meeting of 1904,—the meeting of the stockholders of 1904.

Q. As such officer did you have anything to do with the actual active management of the plant?

A. No, not directly.

Q. Now did you have any information from any of the officers of the company as to any financial difficulty that it was in?

A. No sir, I did not, the superintendent of the compress called me up by telephone one day, and told me that the checks of
237 the secretary given for labor and for other items were going to protest at the bank, and asked me what he should do about it.

Mr. BLAKENEY: I object to all this conversation——

Q. What did you do?

A. I told him that I would be over on the train the next morning——

Objected to as incompetent, irrelevant and immaterial, and as self-serving.

Overruled. Exception.

—and that I would call on the board of directors—call them together, and get some action on the matter.

The COURT: When was that?

A. It was in March 19[illegible]. And I came over on the train the next morning and arrived at Shawnee about 10:30, and at about the noon hour I went down to the Shawnee National Bank and had an interview with Mr. Douglas.

Q. What office did Mr. Douglas have in the company?

A. He was treasurer of the company. I told him that I had heard that the checks were going to protest at Shawnee, and I asked him for some explanation, and in the course of my remarks to him I stated that I understood that they had borrowed about $6,000 in the bank on a certain note that he held, and he says, "Yes, they *I* have done so, but now I have got all the money I want and I will finance you for the balance of the season——"

Mr. BLAKENEY: Objected to and we move to strike out that as

incompetent, irrelevant and immaterial, and as self-serving declaration.

Overruled. Exception.

Q. Then what did you do?

A. I said it was a satisfactory arrangement, and I got up and telephoned to Mr. C. J. Benson, he was another officer of the bank, and a stockholder; with him I had some previous conversation about the same matter,—advising him of the result of the agreement.

Mr. BLAKENEY: Objected to as incompetent, irrelevant and
238 immaterial.

Objection sustained as to Benson.

Q. Yes, that is right. Were you present at a meeting of the board of directors at any time during the summer of 1904, prior to the time that this loan was made by the Shawnee National Bank,—this second loan to the company, and the second mortgage?

A. Yes, I was present at the meeting of the stockholders in 1904, soon after I bought the stock of the corporation, at which the matter was discussed.

Q. Now did you make any offer or statement there to have this second loan carried?

A. I recollect very well the matter coming up for discussion, and I suggested that it could be done at Oklahoma City,—at any rate I had Oklahoma City in mind, at the rate of 8 per cent., on the second mortgage.

The COURT: You said that to the stockholders?

A. Yes sir, in the stockholders' meeting, and that being discussed the question was finally decided that as a home man had been carrying the loan, that he should be allowed the privilege of carrying it for another year at the rate fixed by him at ten per cent., and to that we agreed.

Q. When did you first learn that the note had only been made for six months?

A. Along that morning.

Q. Did you subsequently make arrangements whereby you would have carried it if you wanted to?

A. Yes sir, an arrangement with the State National Bank at Oklahoma City, by which it could be carried at 8 %.

Q. Now, Mr. Anderson, you may state whether or not at any time, and especially at the times you came to Shawnee, or at the conversations with Mr. Douglas with reference to buying the compress or buying additional stock, had the purpose in your mind, or
239 did any act for the purpose of depressing this stock, or mortgaging the press in such a shape as to compel the other stockholders to make a sacrifice?

A. None whatever; I had done what I could all the year to feed the compress, and I put all the cotton into the Shawnee Compress that could go there through the whole season.

Q. Now I will ask you then this question, Mr. Anderson: if the proposition had been presented by and of the officers of the company or other persons at the meeting of April 24th, 1905, and submitted to you, that it was necessary for somebody to carry this second loan,

especially this $6,000 or more whether or not you could and would have arranged for that loan to have been carried another year, for the stockholders of the company?

A. Yes sir, I would have been glad to take it up with my company——

Mr. BLAKENEY: Objected to as incompetent, irrelevant and immaterial.

Sustained.

The COURT: I will let that answer stand, in so far as it may relate to the good faith of the stockholders.

Q. Well, could you and would you, as a stockholder of the company, procure a loan to the company for the money?

A. Yes, sir, I had a proposition to that effect.

Q. You had a proposition to submit to them to that effect, do you mean?

A. I had a proposition to do the business; I had not submitted it.

Q. Why did you not submit it?

A. It wasn't called for; there wasn't any action taken,—nothing to show that they were in depressed circumstances at all.

Q. At what rate could you have procured that loan for the company if they had desired it?

A. Eight per cent.

Cross-examination.

240 By Mr. BLAKENEY:

Q. You say that you could and would have gotten a loan placed for the compress company at about 8%?

A. Yes sir.

Q. Mr. Webb drew a draft on you for the amount of his loan, didn't he with his notes attached?

A. No sir.

Q. Well, he drew it on the firm that you were connected with, did he not?

A. No sir.

Q. What firm did he draw it on?

A. I don't know. Some notes were presented for payment at Fort Worth; I had a letter to that effect.

Q. And they were protested?

A. Not to my knowledge.

Q. Well, you got notice of protest didn't you?

A. No sir.

Q. Were they presented to you?

A. No sir.

Q. Well, you know that the Webb notes showed that they were presented to you and protested, don't you?

A. No sir.

Q. Why did you not take up the Webb notes if you could do it; you knew that Webb was demanding his money, didn't you?

A. Well, I can't recall that there was ever any direct demand

made on the board of directors of the Shawnee Compress Company, for Mr. Webb's money.

Q. Well, if they had presented it would the company have had any means to pay it?

A. Well, if the matter came up for discussion, I might have advised ways and means.

Q. Well, what could be more direct than the presenting of the notes to you, and the demand made by Webb in Fort Worth?——

Objected to.

A. I have got nothing to do with Fort Worth on earth.

Q. Well, were not these notes presented to you or to your company for payment?

A. No sir.

Q. Then how did you know that they were sent there?

A. I got a letter to that effect from Mr. B. L. Anderson,
241 asking me if I had any knowledge of it.

Q. This letter showing about the interest due on this indebtedness was right before the stockholders and directors both, at Shawnee, wasn't it, and discussed?

A. When, at what time?

Q. On the 24th of April?

A. There was some correspondence there from Mr. Webb, yes sir.

Q. Then a motion was made that Mr. Beatty see if he could not negotiate a loan at 8% and you voted for it, did you not?

A. I suppose the minutes will show, I don't recollect, I know the matter came up for discussion, but it was always understood——

Q. Answer the question. When the matter came up for discussion then, did you even offer to place this for the compress company?

A. I did not.

Q. You also knew, did you not that the property was advertised for sale for taxes?

A. I did not; I saw it in the Dallas News that it had been done.

Q. You also saw that they had to get money from the Gulf Compress Co., didn't you?

A. No sir, I did not see that.

Q. Now, did you make any effort to try to pay the employees at that time?

A. No sir.

Q. Do you say that you were at any time in a condition to have taken up all of this indebtedness that the company was owing and have carried it?

A. I believe that I could have made arrangements all right.

Q. That was on condition that they would turn the compress over to you was it not?

A. No sir.

Q. You selected a man and sent him there, did you not?

A. To do what?

Q. To help you in getting the compress?

A. No sir.

Q. Did not you send Mr. Bass there?

A. No sir, he applied to me for a position, and I referred
242 his application to Mr. Beatty.

Q. Did you not sign a contract with Mr. Beatty yourself?

A. I believe I did.

Q. Don't you know that Mr. Beatty did not put any men on that compress and that your firm put in Bass and that Mr. Aydelotte put in a man and that the other firm put in another man?

A. No sir, I don't know that. I wrote to a gentleman in Tennessee and asked him if he was open to a proposition, and he replied that he was not,—that was for superintendent, about a year ago.

Q. Now you say that you had this talk with Mr. Douglas,—the first talk that you had about buying the stock, wasn't it in response to this letter you had written?

A. No sir, the talk with him about his carrying the compress through the season was before this letter in March 1905.

Q. About a year ago, you say that you made a statement at the stockholders' meeting that you could finance this second loan.

A. No sir.

Q. And that they insisted on letting Mr. Douglas finance it?

(No answer.)

Q. Don't you remember Mr. Douglas stating at this directors' meeting that he would carry that until the indebtedness came due, and that then he wanted it paid?

A. The best of my recollection about that conversation that took place there,—he had agreed to carry them before they went there, and he made some remark about wanting his money, and that he would like to have it closed up.

Q. Now you don't know when the note matured?

A. No.

Q. And the first you had heard about the maturing of the note was when the checks was protested?

A. Yes sir.

Q. And then you came and had a talk with him?

A. Yes sir.

Q. And then he said he did not want the money?

243 A. He said he didn't.

Q. Did any of the stockholders know you were in town?

A. Yes sir.

Q. Did you have a directors' meeting?

A. No sir.

Q. Did not Mr. Douglas tell you at the time that he handled that money on the preceding year that he wanted his money?

A. No sir.

Q. Didn't he also tell you that they had sent a bank examiner there——

A. No sir.

Q. Did not he make a statement of that kind to you?

A. No sir.

Q. Now in that conversation that you had there, was something

about buying said, about in substance as this letter refers to? (handing witness letter).

A. Yes sir.

Q. Now that was after those checks had gone to protest was it?

A. That is my recollection, yes.

Q. You say that Mr. Douglas wrote you a letter which you have exhibited here, in which he asked you to come to Shawnee, you and Burney both came, didn't you?

A. Yes sir.

Q. Now about how long was it before this meeting of the 24th or 26th of April *was it,* that you came down to see about these checks going to protest?

A. To the best of my recollection it was in March that I came over.

Q. Well, about what time in March?

A. I cannot recall.

Q. Well, was it the middle of March, the first of May, you think, or earlier?

A. I could not say.

Q. Mr. Douglas wrote you this letter on the 3rd of March, did he not?

A. The letter will show.

Q. Was it March that you got this letter from Douglas?

A. That is my recollection that it was in March.

Q. Then it was subsequent to this letter?

244 A. My recollection is that the matter of the protesting of the checks came up before the receipt of that letter.

Q. Mr. Douglas ask- you to come over, that he wanted to see you about the compress business and you came over?

A. Yes sir.

Q. That is, he wanted to sell it to you?

A. He talked to me about it.

Q. And urged you to give him a bid?

A. He asked for a bid.

Q. Well, he wrote you a letter then along in April, asking you if you would not buy the stock too, didn't he?

A. I received another letter from him, asking me if I would not sell my stock.

Q. Mr. Anderson, didn't he tell you in that conversation with you about the 3rd of March in response to this letter, that, on account of the compress being so heavily in debt, he thought it ought to be sold and wanted you to buy it?

A. No sir.

Q. Didn't he try to get you to buy it because he wanted his indebtedness taken up?

A. I don't know what his motive was.

Q. Didn't he tell you that?

A. No sir.

Q. Did you talk to him at all about the indebtedness?

A. Of the press?

Q. Yes.

A. I don't know that I did.

Q. You made him an offer did you not?
A. Yes s
Q. What did you offer him?
A. No, I didn't make an offer myself; B. L. Anderson, made Mr. Aydelotte an offer in Shawnee, but I was not present at the time.
Q. Did Mr. Douglas give any reason for wanting the press sold?
A. No sir, not to me.
245 Q. Was not any reason assigned there by either of you for the sale of it?
A. He didn't assign any to me.
Q. Well, you wrote him a letter after you went back asking him to please answer it——
A. I asked him to answer yes. I had no letter from him asking for an extension of time.
Q. Well, he told you over the telephone, did he not, that the compress would have to be sold, that it was so in debt?
A. No, he didn't.
Q. Why did not you ask Mr. Douglas then why he wanted to sell that property; you didn't want to sell, did you?
A. No, I didn't want to sell.
Q. Well, did you want to buy?
A. I could have done it and would have done it, at the proper price.
Q. You would have bought the entire assets of the Shawnee Compress Company at the proper price?
A. Yes, sir.
Q. It would have needed no injunction suit on behalf *on* the minority stockholders to have enjoined that sale, would it?
A. No, not if they got a proper price for it.
Q. Did not you remark at that meeting that they had on the 26th of April that this indebtedness was pressing?
A. What date?
Q. The 24th day of April?
A. The matter was discussed about the financial condition of the press according to my recollection, and Mr. Beatty, the secretary was instructed to see if he could not get an extension of the paper,—that is my recollection.
Q. He was instructed not to get an extension of that paper, wasn't he, but to negotiate another loan some where else?
A. To get an extension of the notes is my recollection; I rested on the assumption that Mr. Douglas' word was as good as his bond, and that he would finance the company as he said he would. He
246 said that he would carry the paper for one year.
Q. Don't you know that after that meeting that you had with Mr. Douglas, about the time the checks went to protest, that Mr. Douglas applied another thousand dollars that was deposited in the bank there, and even that did not demand any explanation, you think, or show that he was demanding his money?
A. I was surprised that he did it, after his agreement with me.
Q. You say that you sent cotton from El Reno and other points west of El Reno to the Shawnee Compress Company?

A. Yes sir.
Q. You do considerable pressing at Oklahoma City, don't you?
A. Yes sir.
Q. About how many bales did you compress there?
A. I would say from memory that it was about ten thousand.
Q. You don't think that it was 20,000, do you?
A. No sir, somewhere in the neighborhood of 10,000.
Q. All of that cotton could have been sent to Shawnee could it not?
A. No sir, it originated mostly on the Frisco Ry. south of Oklahoma City.

Redirect examination.

By Mr. KEATON:

Q. Is this the letter you stated that you received, the letter from Mr. B. L. Anderson about that note having been presented to him?
A. This is the letter, yes sir. (Exhibit 29.)
Q. You had no interest whatever in the Oklahoma City Press?
A. None whatever.
Q. And they charged ten cents for pressing there, didn't they?
A. Yes, they charge an additional ten cents tariff for handling it.
Q. Now you say that at this meeting of the 24th, you did not make any statement there that you would finance the company or take up this second mortgage from these others; why didn't you
247 make any statement of that kind?

Mr. WOODS: Objected to as a repetition.

A. I did not because of the fact that a committee was appointed to ascertain if they could not procure an extension of this paper, and that committee had not yet reported.
Q. I am talking about the meeting of the 24th of April, when that last proposition was brought out; why didn't you make that proposition there?
A. Because the extension of the paper was brought up before the last proposition was made, and the committee was appointed to see if they could not procure certain extensions, and that committee had not yet reported.
Q. Were you on that committee?
A. I was not.

Mr. KEATON: We offer this letter in evidence. (Exhibit 29.)
A copy of which said letter, so marked, is attached hereto and made a part hereof.

By the COURT:

Q. Mr. Anderson, you say that the concern could have been financed so that it could have operated this year?
A. Yes sir, there was a proposition at the Shawnee National Bank to assume the second mortgage.
Q. What do you say about its condition now?
A. I think it could be operated at a profit, and I think that the paper could be cared for.

Q. In what way?

A. Well, we would have to arrange it with the parties interested; of course we would have to put up paper as collateral, and secure the people that held the mortgages.

Q. Then the stockholders would have to do it individually?

A. Well, if they made a new *mote* and mortgage, they would probably have to endorse the note.

Q. Do you think that the assets of the concern itself are
248 such as that it could borrow money upon its own credit and so run?

A. Yes sir, the property over there is worth more than its liabilities.

Q. What is the property worth?

A. The property is worth from twenty-five to thirty thousand dollars.

Q. And what is the total indebtedness?

A. About $16,000 to the best of my information.

Q. How much of that is due?

A. The Shawnee National Bank debt is due.

Q. That is how much?

A. That should be about $5,000 or $5,500.

Q. Now the other indebtedness is how much?

A. $11,000.

Q. When will that be due?

A. That is extended for a time,—I don't know just when; I think the books show; the bills-payable account should show; I haven't carried it in my head.

Recross-examination.

By Mr. BLAKENEY:

Q. Mr. Anderson, don't you know that every one of the Webb notes matured on the 1st of last January?

A. No sir, I don't know that.

Q. Don't you know that four or five of them became due, had matured in the May or January preceding, and that the compress company had tided it along by promising to pay them when the last became due—pay it all then?

A. My understanding is that the notes have been extended.

Q. Well, how have they been extended?

A. By agreement with the Webb Compress Co., they have written letters.

Q. Well, you have seen the letters that have been introduced in evidence here, haven't you?

A. I have seen the minutes also.

249 Q. And these letters that you refer to—are these the letters?

A. Yes, they are the same letters.

Q. They show that in case of the payment of the interest they would extend then, don't they?

Mr. KEATON: We object to that as a misconstruction of the letters.

Q. Well, these are the letters that you refer to, are they?
A. They are the only letters that I have seen and they are the only official letters that we ever presented.
Q. Now don't you know that on April 24th, at that meeting, that it was stated that all of the indebtedness was past due?
A. No, I cannot say that I know it.
Q. Well, you heard it said there, didn't you by the secretary?
A. I have no recollection of it.
Q. Now, you say you only owe Douglas $5,500?
A. That is my recollection.
Q. Do you know where you got that from?
A. Mr. Beatty, the secretary of the company.
Q. All the statements furnished you show $6,000, don't they?
A. I don't recollect what the last statement shows; I guess it shows for itself; I had the books audited and found out.
Q. You said that you thought the indebtedness would be extended by note with the directors endorsing it——
A. I think possibly that the assets of the company would carry it without any endorsement,—the compress property.
Q. Do you think that you could get a loan aggregating about eighteen or nineteen thousand dollars on that property?
A. I don't think that there is any doubt on earth about it.
Q. Where could you get it?
A. Most any place.
Q. You could not get it from the banks could you?
A. Yes, I think so.
Q. You know that banks cannot make a loan on that kind of property, don't you?
250 A. Well, they have a way to get around it by making a trust deed.
Q. There was some indebtedness in regard to taxes, wasn't there?
A. There was an item charged of $170 for the taxes for the last half of 1904.
Q. Now Mr. Whamby's statement to you shows that all the indebtedness is past due, doesn't it?
A. It does not make any statement of the dates of the notes; it merely carries it in the bills payable account.
Q. But it has a notation showing that they are all matured, has it not?
A. No sir, I haven't seen it.
Q. You have examined that statement, haven't you?
A. Yes sir.
Q. You say that property is worth 25 or 30 thousand dollars?
A. In my estimation it is worth 25 or 30 thousand.
Q. And you offered thirty five?
A. No sir. I would have taken an interest in it if it had been satisfactory.
Q. Well, didn't you and Mr. Beatty counsel about it?
A. Yes.
Q. Didn't you go and look at it?
A. Yes.

Q. And didn't you coma back and tell Mr. Beatty that the plant would have to be repaired, and that some of the planks of the platform was broken?

Q. I think I gave Mr. Beatty my impression of about what the property was worth.

Q. Didn't you tell him that so much would have to be spent on repairs?

A. No sir, I did not; I don't claim to be an expert.

Mr. KEATON: Mr. Anderson is this one of the Webb letters that you have referred to, this Exhibit 22, from the Webb Press Co. dated March 17, where you thought that they had arranged the indebtedness?

A. Yes sir.

Q. Were not you advised on the 24th of April that the arrangement had not been perfected, referred to in that correspondence?

251 A. I am sure that I wasn't advised differently, that that could not be done, and it was still my impression and still is my impression that there would be no difficulty whatever in extending the Webb Compress Company's notes.

Q. That was conditioned upon a satisfactory adjustment of the second mortgage, wasn't it?

A. There might have been some conditions named in it; I relied entirely upon Mr. Douglas' word, that he was willing to carry it on.

B. L. ANDERSON is the next witness called to the stand by the plaintiff in rebuttal, and gives the following testimony under oath:

By Mr. KEATON:

Q. You are acquainted with Mr. Hanson, are you?

A. Very well.

Q. Do you remember having a conversation with him at Austin Texas, with reference to any of the matters connected with the press?

A. Well, a very slight one, I remember that he was leaving Austin rather hurriedly, and I think it was just as we said good bye, I asked him whether he was coming out west, and he volunteered that he would come out west soon, and the conversation was very brief, but during the course of it the fact was developed that he had some interest in the Shawnee Compress Company, and he asked,—or I believe he said that he had made some proposition or intended to make some proposition. At any rate, my answer—my only answer was that we didn't want to lease it. That was all that was said between me and Mr. Hanson in regard to Shawnee.

Q. Did you say anything about having a man there to adjust the matter?

A. No sir, I didn't understand his testimony this morning about having a man there, I don't recall; we didn't have any man there about adjusting the compress matter. We had a cotton buyer there, but he had nothing to do with the press. The only man in

252 Shawnee that I ever talked to in regard to that compress was Mr. Douglas, and that was done at his solicitation.

Q. When was that?

A.—Him and Mr. Aydelotte at the same time; why I think it was along in March; I wrote Frank Anderson, or Frank Anderson had wrote me that Mr. Douglas had asked him to go over and ask me to go with him, and I did so, and Mr. Aydelotte was present at the time; and they are the only two people in Shawnee that I had any negotiations with in connection with this press.

Q. Do you remember any conversation with Mr. Beatty about——

A. Well, let me add there that Mr. Douglas impressed me with the fact that the stock was in his possesion and that he was controlling it absolutely; I knew that Mr. Beatty and Mr. Aydelotte had been stockholders, but Mr. Douglas, I assumed, was the spokesman.

Q. Well, you heard Mr. Beatty's testimony this afternoon with reference to your saying that you would not agree that you would not build in Shawnee?

A. My recollection of that is that it was during the conversation that I had with Mr. Beatty, wherein he stated that Lesser, Goldman & Company had given him or somebody else to understand that unless the Shawnee Compress was leased to the Gulf Company, that they would put up a press, and my answer was that if it was leased to the Gulf Company that there would be a press go up any how.

Q. Do you have any recollection of saying that you would not agree not to build, if the lease was not made?

A. I most certainly must have said that because I could not bind my company.

Q. Do you remember saying anything about that?

A. I believe I do.

Q. What did you say?

A. I believe he asked me if a new press would go up within
253 12 months, and I told him that I could not say, that I could not agree.

Q. Now you heard his statement that you had stated to him that you owned 20 odd compresses, and was building one at Pauls Valley?

A. Yes sir.

Q. You may state what is the fact about that; what conversation you had with him, if you had any?

A. Well, with reference to Pauls Valley, my conversation with him was, that I told him that, as a matter of information that there was a new press going to be put up at Pauls Valley, and that my understanding was that it would not be operated. I could not have intimated that I had any interest or that my firm had any interest.

Q. Have you any interest now?

A. None, never did have; we were invited into it but declined it.

Q. Well, now what conversation did you have with Mr. Douglas and Mr. Aydelotte about buying stock or the plant?

A. Well, when we called on the bank, the compress proposition in general was discussed, and I was very much impressed with the idea that, they were both dissatisfied with something, and I thought that it was the conduct of the management, and there was no intimation so far as I remember, that they wanted to sell anything on

account of any distress in the financial condition. I remember a letter that Mr. Douglas wrote to Frank Anderson, which he sent to me, stating that he wanted to do something with the compress, and he would rather that our firm would own and operate it than any other firm operating in that territory; and in the course of our conversation that morning I told him that we would buy it, either the physical property or the stock, and my proposition,—Mr. Douglas I believe, was ill, he was suffering with a cold, and he didn't leave the bank,—and I made my proposition to Mr. Aydelotte at the station; it was either to buy the physical property, or else a certain number of shares on the basis of the physical property, as at
254 that time I didn't know what the physical condition of the property was; I didn't have any accurate information, so I could not have bid on the stock; I simply bid on the physical value of the plant, and was willing to either take the entire plant, or else the stock that he assumed to control.

Q. What was your bid, if you remember?

A. My bid was $25,000 for the physical property, or enough shares to make our stock 400 shares, on that basis; we didn't ask for the control of the entire outfit.

Q. You say that you had no knowledge of the exact financial condition?

A. No, I believe that Mr. Frank Anderson did ask Mr. Douglas for the books to be written up to date, but he had some reason—that he was indisposed or something, and it was not done.

Q. Now in your conversation with Mr. Hanson at Austin, was there anything said to the effect that there was any dissatisfaction with the management up here?

A. Well, I don't believe it was at Austin, but I believe there was some conversation of that kind with Mr. Hanson somewhere. I believe the substance of it was that there was some claims out,—some dissatisfaction about the wages, or something like that.

Q. Did Mr. Hanson, in the conversation you had with him at Shawnee, or in either of those conversations say anything about whether he had made a loan in the stock standing in the name of Beatty & Stubbs, or owned by them, and if so, what was it?

A. He said that it was his intention,—that Mr. Beatty had told him that he was stranded or in bad condition,—I don't remember the expression,—and had asked him for a loan, and that he believed he would make him a loan and take his stock, with an irrevocable proxy, and make the loan for a year, believing that when it matured Beatty would not be able to pay him, and it would revert to him.

255 Q. Were you present at the stockholders' meeting of April 24th, 1905?

A. Yes sir.

Q. Do you remember any discussion that was had there about extending these notes,—the bank indebtedness, and the Webb Company—Webb Compress Co.?

A. I don't think there was anything said about it,—I don't recall anything having been said about the Webb paper, but Mr. Beatty

did say something about the financial condition of the company, and I remember I had to draw him out, and the impression I gathered at the time was that the proposition that he finally submitted was absolutely cut and dried.

Q. What was that?

A. He came from Mr. Hanson, and their plans were all,—it seemed that the impression made, was that it was all prepared,—made——

Mr. Woods: —We move to strike that our as not responsive how it seemed to the witness.

(No ruling.)

Q. Well, was there any other proposition submitted?

A. No sir, that was submitted and passed over our veto, and the next day it was signed up, and we had no time——

The Court: —That was the lease?

A. That was the lease.

Q. You mean that the committee accepted it the next day?

A. I understand that they did.

Q. Did you own stock in this Shawnee Compress Company, or did the firm that you were in own it?

A. I believe that it was in the firm's name.

Q. What firm?

A. Neil P. Anderson & Company.

Q. In what business was that firm engaged?

A. Well, we are cotton merchants.

Q. Buyers and shippers?

A. Yes sir.

256 Q. Now I will ask you to state whether or not, if the proposition had been submitted to you, and the request made, that you or your firm could have and would have negotiated a new loan to take up that second mortgage loan and procure an extension of the Webb paper, and advanced the money or procured the loan to take that up?

A. We could have done it and would gladly have done it rather than see the foreclosure; I never felt that the financial condition of the company was bad; of course I knew that Mr. Webb held a number of loans; I know of numerour instances where Mr. Webb carries presses that he sells for quite a number of years, and he frequently goes as high as 19 or 20 thousand dollars; I have never known of him pressing any claims——

Mr. Woods: We object to that as incompetent and irrelevant.

Objection sustained.

Q. Are you acquainted with the firm and with him?

A. Yes sir.

Q. You stated, I believe, that, before you would have seen any foreclosure proceedings brought, you would have settled it among yourselves?

A. We most assuredly would.

Q. Now, was that proposition ever submitted to you?
A. No sir.
Q. Was there any explanation or any of the board of directors or officers urge anything about these Webb notes, or did they simply show up there?
A. They simply showed up, and I had no information about that at all.

Cross-examination.

By Mr. BLAKENEY:

Q. Mr. Anderson, you received a letter from Mr. Webb, didn't you, telling you that he had sent these notes to the bank there for collection?
A. I believe not, I don't remember it.
257 Q. Don't you remember that Mr. Webb wrote to you and told you that the Shawnee Compress Company had let them go to protest, and did not even reply to his letters?
A. I don't recall that; in fact my impression is very strong that the presentation of the notes is the first intimation I had.
Q. You are a practical press man are you not?
A. Well, I have had some experience in the business.
Q. How many presses are you associated with in the west?
A. Well, I am an officer in nine in Texas, and five in the two territories.
Q. Any in any other places?
A. No sir.
Q. Now you say that you did not promise Mr. Beatty in that conversation that your company would not put up a press in Shawnee in five years or even in one year, if they did not lease, because you did not have any authority to make such promise?
A. Certainly, my promise would not be binding.
Q. Well, that was the reason why you did not make such a promise, is it; because you did not have the authority?
A. I said that he asked me if I would and that was my answer.
Q. That you didn't have authority?
A. My answer was that I would not promise.
Q. You did have authority to promise, didn't you?
A. No sir.
Q. Well, you had authority to telegraph Mr. Hanson that if he leased that compress, that the Traders' Company would build immediately in Shawnee and Oklahoma City both, didn't you?
A. That message to Mr. Hanson was confidential, and in the shape of information, based on our personal friendship.
Q. Did you have any authority to make that statement in your telegram to Mr. Hanson?
A. Well, I don't believe I did,—to bind the Trader's Company, no, sir.
Q. You had the conversation with Mr. Hanson that he
258 detailed at the depot, didn't you, substantially?
A. Part of it, I recall, and other parts I think are incor-

rect. Well, you recall that part of it where you told him that if he had kept out, you would have gotten hold of this compress, didn't you?

A. No sir, I don't think I did.

Q. You told him that in substance, didn't you?

A. No sir, I don't think I told him that.

Q. You told him that about the Oklahoma City property didn't you?

A. I told him that in January in Memphis, I believe.

Q. What did you want to meet him here for?

A. I wanted to make a protest against him leasing the plant.

Q. You had already done that.

A. I wanted to confirm it; I didn't think that I could make the protest too strong.

Q. You did not want also to confirm that part of the telegram that you were going to build if he went on with his lease, did you?

A. I don't know that I wanted to confirm that part of it; I may have done so.

Q. Why did you want to build in Oklahoma City; was that just to intimidate him?

A. No sir, my reason for mentioning Oklahoma City was, that my understanding is that the shippers in this country are not satisfied with the methods and arbitrary management of the Gulf Compress Company.

Q. You were just advising him in a mild way that the shippers were not satisfied.

A. It was not a threat.

Q. Now when you met him in Shawnee, did not you tell Mr. Hanson, "our firm got in there ahead of yours and you should keep out of our territory"?

A. No sir, I don't recall that.

259 Q. Did you tell him that anywhere else?

A. My conversation with Mr. Hanson with reference to Oklahoma City was had in Memphis, as I stated—I believe it was in January——

Mr. KEATON: Well, we object to the conversation in January.

Q. Now give us that conversation at the depot here in Shawnee?

A. I had two with him.

Q. Tell us the first one?

A. I met him and Mr. Martin, or he and Mr. Martin, rather on the train, and I rather apologized for having sent the messages, or for some of the contents of the messages, because I didn't want him to feel that it was done as a threat; but I told him that we had had a meeting of the Shawnee Compress stockholders the day before, and that there had been a cut and dried proposition submitted from him to lease it for $6,000 gross,—that is, excluding the insurance and taxes,—and that we had protested and voted against it. He very probably volunteered that he would gladly withdraw if he could, but that he could not, as his proposition was in writing.

Q. Well, did you tell him anything about getting out of here,—that you wanted to get hold of this press?

A. I don't think that was mentioned in Shawnee.

Q. Well, you did want to get hold of it, didn't you?

A. We would have bought it, yes sir.

Q. Well, didn't you ask old man Phillips to advise you from time to time as to the condition of the compress there, and let you know when it was ripe for you to come and buy it?

A. No sir, I don't think that I advised him anything of that kind—old man Phillips?

Q. Yes, Frank Phillips; I don't know whether he is an old man; I'll take that back,—a young man?

A. I believe I met Phillips, I think it was at Dallas——

260 Q. —Well, I don't care anything about it, unless you instructed him to keep you advised.

A. No, I don't think I did, no sir. Mr. Phillips lives in Texas.

Q. Did not you desire to force the sale of that compress so that you could get *it* on the ground floor, and didn't you employ Mr. Phillips to keep you informed?

A. I don't think so, no sir; I met Mr. Phillips in Shawnee where he was buying cotton——

Q. Well, then you requested him to perform that service for you didn't you?

A. I don't think I did.

Q. You knew that from time to time he was informing you and advising you, didn't you?

A. Well, we were associating together, but I didn't ask him to advise me.

Q. Well, he gave you advice, didn't he?

A. I believe I did hear from him, rather in a general way.

Q. Mr. Douglas told you in the conversation that he had with you that he had a good deal of indebtedness against that compress, didn't he, and that he would have to close it out?

A. I never heard Mr. Douglas complain of his bills.

Q. You knew at the stockholders' meeting that Mr. Beatty had been appointed on a committee to try to arrange that indebtedness didn't you?

Mr. KEATON: Which one?

Q. On the 24th of April?

A. No, I can't say that I knew that before the meeting.

Q. You learned that at the meeting, didn't you?

A. Mr. Frank Anderson may have told me if I knew it.

Q. Well, of course, something might have happened, but did it happen,—were you Notified,—were you informed?

261 A. That Mr. Beatty had appointed a committee to——

Q. No sir, were you informed, when Mr. Douglas was present, that Mr. Beatty was appointed on a committee to try to arrange to take up that indebtedness?

A. I think I was advised that Mr. Beatty had been appointed a

committee to negotiate with Mr. Webb; I don't recall his appointment to negotiate with Mr. Douglas.

Q. Well, were not these minutes correct——

A. I don't think I attended any meeting except the one of April 24th.

Q. Well, the meeting of April 24th—the minutes show that Mr. Beatty was appointed to see if he could not take up the mortgage at eight per cent?

A. I believe it was discussed, yes sir.

Q. And wasn't it also discussed that Mr. Douglas would not carry it any further, and wasn't Mr. Douglas abused there considerably about the way he pressed that indebtedness?

A. I remember that I remarked that I thought it rather strange procedure for him, acting as banker and treasurer of the company.

Q. Don't you remember that it was discussed that Mr. Douglas was insisting on his money?

A. I don't know——

Q. You knew, didn't you that the Santa Fe Railroad had been garnisheed by the creditors of the company,—compress?

A. No.

Q. Didn't you know that the Oklahoma National Bank had commenced garnishee proceedings against the compress, and had garnished the funds of the company in the hands of the Santa Fe railroad?

A. No sir.

Q. For checks that it held that had gone to protest, you didn't know that?

A. I don't remember anything about it.

Q. And wasn't Mr. Douglas abused about that matter; and wasn't it generally understood that Mr. Douglas was clamoring for
262 his paper to be taken up?

A. Mr. Beatty submitted the proposition, but he never gave us any other alternative.

Q. Well, he explained to you the necessity of taking it up, didn't he?

A. I think his explanation was made——

Q. And yet neither you or Frank Anderson made any proposal to take it up in any other way?

A. I don't think I did.

Redirect examination.

By Mr. KEATON:

Q. Was there any opportunity given any body?

A. There was not.

Q. You spoke about the arbitrary methods of the Gulf Compress Co.: I will ask you why you preferred not to have the Gulf Compress Co. running the Shawnee Compress?

Mr. WOODS: Objected to as incompetent.

Sustained.

Q. You stated that you were a shipper, I believe?

A. Yes.

Q. You heard the testimony here about the railroad companies requiring the compresses to give bond?

A. Yes.

Q. Are you acquainted with the custom of the railroads in that respect?

A. I am somewhat familiar with it; I know that none of our compresses give bond.

Q. And never have?

A. No.

Q. Did you hear anything about why the railroads up here were asking for bond from the officers of the Compress Company?

A. Yes, I heard one reason, it was on account of——

Mr. Woods: Objected to as hearsay.

Sustained.

Q. Did you hear from the officers of the company or compress why the railroads at Shawnee, some of them, were asking for the compress to give bond?

(No answer.)

Q. What reason had you for objecting to the Gulf Compress Company, what special reason, if any, leasing this plant here, in which your firm was a stockholder?

Mr. Woods: Objected to as incompetent, irrelevant and im-
263 material.

Sustained. Exception.

Q. Do you know what the custom of the compresses is Mr. Anderson, with reference to charging that extra ten cents tariff, that was discussed here.

Mr. Woods: Objected to as incompetent, irrelevant and immaterial.

A. Well, I don't think that it was ever customary for the Shawnee Compress to charge it.

Q. Well, how about your compresses?

A. The Compresses,—Chickasha and El Reno and Hobart compresses, undertook to charge it for a few months,—two or 3 months last season.

Q. Had they ever charged it before?

A. No sir.

Q. Is it on or off now?

A. It only stayed on for not exceeding three months.

Q. Now I will ask you if it is not a fact that one of your special reasons for objecting is, that if the Gulf Compress Company gets it, that ten cents will be included in its schedule of tariffs, or else you will have to do the marking and loading and unloading, and tagging and weighing and so forth that they have mentioned?

A. Yes sir.

Recross-examination.

By Mr. BLAKENEY:

Q. You know that the Gulf Compress Company in its tariff does not charge anything for unloading and loading, do they,—they unload weigh it and so forth without any charge?

A. It is the same thing——

Q. Now you had some 10,000 bales of cotton sent into Oklahoma City, didn't you?—on which you had that charge of ten cents?

A. We had some cotton going into Oklahoma City owing to the blockade at Chickasha; that is one of the reasons we put that on——

264 Q. Well, did you put it on all of your compresses in Texas?

A. No sir, never in Texas has any compress ever charged the shipper for any services of that kind, that I know of.

Q. Did you put it on last year in all of your compresses, commencing with September 1st?

A. I think not, I think that the season was well under way before we undertook it.

Q. Now Mr. Anderson, you took it off then at Chickasha after the cotton commenced coming in slowly, didn't you?

A. I don't know; I thing we took it off because the shippers were dissatisfied with it.

Q. Well, you took it off because you wanted to get more cotton, and wanted to please the shipper?

A. To please the shipper, yes, that was one reason.

Q. And it was a matter of competition, and you took it off?

A. No, we didn't care about the competition; it made no difference to our shippers whether it was on or off, they would patronize our compress just the same because they were stockholders.

Q. Well, you wanted to get the patronage of other shippers and you took it off?

A. No sir, that is not it.

Q. Just to ease your conscience then, was it?

A. No sir,—but I thought it was not altogether right.

Q. You charged 25 cents for all the wagon trade, didn't you?

A. Not all of it, there is some of them that don't handle wagon cotton.

Q. Well, all that do handle wagon cotton you charged 25 cents a bale for handling it, don't you?

A. No sir, the compress company charges them 25 cents as yard men and not as a compress.

265 Q. This compress at Shawnee charged 25 cents last year for wagon cotton, didn't it?

A. I don't think it handled any wagon cotton.

Q. Don't you know that they handled some bales at Shawnee and charged 25 cents for it?

A. My understanding is that the compress at Shawnee does not do a yard business.

Q. Don't you know that they fixed a tariff there that allowed the compress 25 cents for handling wagon cotton?

A. No sir, I never heard of it.

Q. Do you know whether or not they charged the shipper ten cents?

A. At Shawnee?

Q. Yes?

A. It did not.

Q. You heard that they did not?

A. Well, I have understood that they did not.

Q. In this conversation with Mr. Douglas and Mr. Aydelotte,—you knew how many shares of stock Mr. Douglas had did you?

A. Well, I wasn't sure about it, Judge.

Q. Didn't you know that he owned seven and a half shares of that stock?

A. I had been given a statement showing that that many shares stood in his name.

Q. And you knew that Mr. Aydelotte had 28 shares in his name?

A. That is what the statement showed, but I hadn't seen the revised statement——

Q. Did you think that Mr. Douglas and Mr. Aydelotte were very much concerned on account of their interests?

A. Well, my impression was that they were trying—that they had bought up the stock, and had become the owners of it, and were putting it on the market.

Q. What would that stock have been worth if that compress had been sold at $25,000?

Mr. KEATON: Objected to as incompetent, and asking for a
266 computation.

Overruled. Plaintiff- excepts.

A. Why I think it was about 15 cents, on a $25,000 basis.

Q. They offered you 18 per cent. for your stock, didn't they?

A. No, I don't think they did.

Q. Didn't Mr. Aydelotte, write you and offer——

A. Well, he might have; I offered that immediately following the information that it was not very strong financially, and I didn't take it very seriously.

Q. Would you sell your interest in that press at the basis of $25,000?

A. Not to day.

Objected to as incompetent.

Sustained.

Q. Did Mr. Benson offer you 17½ for your stock about that same time in April, before this matter got very warm?

A. No, I think that I had a joke with Benson about it in the bank one afternoon, and I don't think he meant anything; I think that he was just looking for information.

Q. You offered him 14 cents, didn't you, for his stock?

A. No, I think we offered him 15 cents for it.

Q. And didn't he make you a counter offer, and say that he would give you 17 and a half for yours?

Objected to as incompetent.

Sustained. Defendant- excepts.

Q. You tried to get Mr. Hanson to enter into an agreement with you to sell or take——

A. I asked Mr. Hanson what he would take——

Q. Did you make a proposition to him that you would divide the territory between you?

A. I don't know whether I made the proposition, or whether it was his, that South McAlester was to go——

Q. —Didn't you say to him to take South McAlester and Muskogee and to give you Oklahoma City and Shawnee, and have no competition or trouble about it?

A. I don't think it was put in that shape.

267 Q. What shape was it put in?

A. It wasn't in the nature of an agreement.

Q. No, it was a proposition, wasn't it, from you?

The COURT: What did you say to him about that, what was your language?

Q. Well, I think the gist of it was——

Mr. KEATON: We object to this as incompetent.

Overruled. Plaintiff- excepts.

A. I think that the gist of it was that the stockholders of the Traders Compress Company was to have no interest whatever in the cotton to be carried to the South McAlester and Muskogee Compresses, but had to the cotton contributory to Oklahoma City and Shawnee. I asked him if he would make an offer and he said that he would try to, that he would be glad to do it.

Q. Now Mr. Anderson, as a cotton compress man of experience, I want to ask you if you believe that the Shawnee Compress Co., with the majority of the stock in the hands of Beatty and Stubbs and under their management and control as majority stockholders, do you believe that the indebtedness of that company could be floated, and that compress kept operated under their management, as a success?

A. Well, I believe it could if we retained our interest.

Q. You think that their management would not interfere——

Mr. KEATON: —whose management?

Mr. BLAKENEY: Mr. Beatty and Mr. Stubbs.

A. I think that the majority ought to manage it.

F. E. ANDERSON is hereupon recalled in rebuttal and gives the following sworn testimony:—

By Mr. KEATON:

268 Q. Mr. Anderson, counsel on your cross examination, asked you if you did not know that this property was advertised for sale for taxes, and you told him you saw it in the News; at what date did you see it?

A. I think about two weeks ago.
Q. Is this the notice (handing witness paper slip)?
A. Yes, this is the notice dated September 5th; that is the first I saw of it (marked for identification, Exhibit 30).

(Here the Grand Jury come in and report.)

Q. Now what do you say with reference to that matter?
A. I clipped this notice out of the paper, and talked it over with yourself, with the request to get me some information about it.
Q. You don't know personally what I did with reference to making an investigation?
A. Except what you told me.
Q. Did any of the officers or Mr. Beatty ever tell you that there were past due taxes?

Mr. BLAKENEY: Objected to.

A. No sir.

That is all.

B. L. ANDERSON is here recalled and examined as follows:—

By Mr. KEATON:

Q. Counsel asked you on cross examination, if you didn't make a certain proposition about dividing certain territory with Mr. Hanson as one of the officers of the Gulf Compress Co.—which company is it that does business principally here?
A. The Traders.
Q. Did any of the officers of the Gulf Compress Company come to you and make an offer to fix the rates for pressing cotton.
A. Mr. A. W. Walton, whom I understood was vice president of the Gulf Compress Company, called on me at Fort Worth about a year ago and——

Mr. WOODS: We object to that as incompetent, about what
269 the witness understood was his position.
Overruled.

A. —and asked if we would not agree to put in certain charges against the shipper.
Q. Well, what were they, did he state them?
A. Not specifically, but it amounted to ten or 15 cents per bale.
Q. What answer did you give to that?
A. I said that we would not.
Mr. BLAKENEY: Did not you, in fact, put it on after that conversation?
A. Not through any——
The COURT: No, did you put it on?
A. Not the charges that he spoke of.
Mr. BLAKENEY: We don't know what the charges were; I believe you said you didn't know what the charges were; you said something like 10 or 15 cents a bale.
A. The charges were for weighing, sampling and marking.

Q. That ten cents you afterwards put on?
A. No sir, I think it was more than ten cents.
Mr. BLAKENEY: He did not put on more than ten cents, did he?
A. I could not say as to that.
Mr. KEATON: I believe you said that charge was not on now?
A. It was only on about three months.
Q. Are Neil P. Anderson and Co. and the Traders' Company connected, or separate firms?
A. Entirely separate.

Mr. KEATON: Now, I would like to have that irrevocable proxy that you spoke of yesterday, and with that exception we close.
Mr. BLAKENEY: Well, I'll get it.

Plaintiff- rests.

Surrebuttal.

H. T. DOUGLAS being recalled in surrebuttal, testifies as
270 follows:

By Mr. BLAKENEY:

Q. What business are you engaged in?
A. I am in the banking business at Shawnee, with the Shawnee National Bank.
Q. Are you acquainted with F. E. Anderson?
A. Yes sir.
Q. Did the Shawnee National Bank hold some notes of the Shawnee Compress Company during the early part of the year, 1905?
A. Yes sir.
Q. How long have you held them?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and not proper sur-rebuttal.
The COURT: I think that is true, Gentlemen.

Q. All right. Mr. Douglas, did you have a conversation with F. E. Anderson about the first of March 1905, in which he mentioned to you the fact that you had been applying some current funds of the Shawnee Compress Company upon the note that the bank held; did you have such a conversation with him regarding that matter?

Mr. KEATON: Objected to as incompetent, and not proper surrebuttal.
Overruled. Plaintiffs except.

A. Why, I do remember a conversation with Mr. Anderson about different matters; I don't recall that I had one in March, or upon that particular subject. It was a well known fact among the officers of the company, that we had charged against the note some funds.——
Q. No, no, did you have a conversation with him about it, is what I want to know.
A. Not that I call to mind.
Q. Did you in any conversation tell Mr. F. E. Anderson that you

had applied about a thousand dollars upon the note due from the Shawnee Compress Company, and that you were willing to carry it as long as they wanted it carried, or anything in substance to that effect,—and finance it for the year 1905?

A. No, I didn't make any such statement as that.

Q. Were you willing to carry them?

271 A. No sir, I never did agree or intimate that we wished to carry it; it had been unsatisfactory for some length of time.

Mr. KEATON: We move to strike out that last statement.

Q. Were you will- to carry that indebtedness?

Objected to by plaintiffs.

Sustained.

Mr. BLAKENEY: Now, if the court please, I ask to reopen the case to ask a question or two upon that single fact.

The COURT: Leave will be granted.

Q. Mr. Douglas, were you willing to extend that note of the Shawnee Compress Company?

A. No.

Q. Were you demanding payment from time to time, from the officers?

A. Yes sir.

Q. Were you willing to carry it?

A. No.

By Mr. KEATON:

Q. Now, Mr. Douglas, when you first took that note, you agreed to carry that indebtedness further, in the stockholders' meeting of June 1904; it was the understanding that you were to carry it a year, was it not?

A. No sir, it was made due in January.

Q. Yes, but didn't you say that you were willing to carry it a year?

A. No sir.

Q. Mr. F. E. Anderson said there that he could get it carried at Oklahoma City——

A. —Why didn't he do so then; it was paying me 12% I think,—it was 10 or 12, one or the other.

Q. Well, because they said that they preferred to let the local man have it, even though it was two per cent. more.

A. Well, we were not that anxious for it.

Q. Were you at the stockholders' meeting?

A. Yes.

Q. Well, did you hear that proposition?

A. I don't remember of it.

272 Q. Were you authorized as treasurer of the compress company, to take funds that came into the bank belonging to that company, and credit it on their indebtedness?

A. Well, I presume that we were authorized to do it.

Q. What position did you have in the bank?

A. President of the bank.

Q. Well, did you take it as treasurer?

A. No sir, I didn't; I took it as president of the bank; it was put into the bank and credited to the compress company.

Q. Well, of course if it was paid to you it was paid into the bank, because you were the treasurer, wasn't it?

A. No, not at all.

Q. Then you did not perform any duties as treasurer?

A. None at all.

Q. Who did?

A. I don't know if there was any; the secretary kept the books.

Q. Do you remember of Mr. Anderson calling on you about the 1st of March about some checks going to protest?

A. I think we mentioned that——

Q. Well, didn't he come to your bank, and talk it over?

A. Yes, he talked about it on different occasions.

Q. And you told him that you had applied some of the money to reduce your note, and were satisfied with it now, didn't you?

A. No, not at all; I told him that we would try to meet the labor bills that had come in up to that time.

Mr. BLAKENEY: The reading is waived of all the minutes, is it?

Mr. KEATON: Yes, but we objected to their competency.

Mr. BLAKENEY: The reading of all of your minutes is waived, is it?

Mr. KEATON: Yes, and yours too.

Mr. BLAKENEY: Yes, and ours too. I just wanted to get it into the record.

273 Whereupon defendant- rests.

Plaintiffs rest, and the case is closed.

See Exhibits hereto attached.

274 EXHIBIT (4).

Duplicate.

Certificate of Incorporation.

TERRITORY OF OKLAHOMA:

To all to whom these presents shall come, Greeting:

It is hereby certified that C. M. Cade, W. S. Search, J. M. Aydelotte, E. B. Keeling and A. J. Dossett have filed articles of Incorporation in this office containing the required statement of facts necessary to form a corporation, under the laws of Oklahoma, to be known as the Shawnee Compress Company, with a capital stock of Eleven Thousand dollars and principal place of business at Shawnee, Okla.

Wherefore the above named persons, their associates and successors are hereby created a body politic and corporate by the name of the Shawnee Compress Company.

In witness whereof, These presents have been attested with the

Grand Seal, and signed by the Secretary of the Territory of Oklahoma, at Guthrie, the 18th day of July, in the year of One Thousand, nine hundred, ninety-nine.

[SEAL.] WM. M. JENKINS,
Secretary of Oklahoma Territory.

275 EXHIBIT (21).

SHAWNEE, OKLAHOMA, *Feb.* 24rd, 1905.

Webb Press Company, Limited, Minden, La.

GENTLEMEN: I have your letter of the 16th inst., and have delayed answering until I could put the matter again before the Directors. I hand you herewith copy of our trial balance January 31st., and will forward you one which will be drawn off on the 28th inst., which should be even more satisfactory. Replying to your question, I beg to state that the Company's indebtedness consists only in the two amounts, of the debt to your good selves, $11,250, and interest and $7000 to the Shawnee National Bank with no accrued interest. In other words our total indebtedness is only about half the value of the plant in its improved condition, and our indebtedness to you is only 33⅓% of the value of the plant.

As I stated in my former letter, had we no- increased our outlay in improvements, we would not have found it necessary to ask for an extension from your Company. About the beginning of last season our indebtedness to the Bank was some $8500, which as shown, has been reduced to $7,000, and I can state with due authority that the Company can at pleasure arrange to have this $7,000 debt arranged to run two years, thus enabling us to devote the next season's earnings to the substantial reduction of your debt. In fact, if you wish to predicate your renewal upon this arrangement, upon our part, I am quite sure I can give it that direction. Your claim being secured as it is by first mortgage, naturally made it desirable upon the part of the Bank to have theirs of last season reduced to the $7,000 as is shown. Your security being now so much greater, and having no further debts to care for next season, we feel that you will find it satisfactory to extend the loan as we have requested.

276 The insurance policies which you write me about were correctly taken out as agreed, and will be sent you by the Bank.

Yours truly, W. H. BEATTY, *Sec'y.*

EXHIBIT (14).

Received at 42 KM S MQ 30 Paid.

OKLAHOMA, OKLA., *April* 25, '05.

C. J. Benson, Shawnee, Okla.:

Yours—Missed train cannot agree to lease but if you do so over my veto think you should have clause in contract if property is sold lease to be annulled.

F. E. ANDERSON.

3.40 P. M.

277 EXHIBIT (3).

Notice of Stockholders' Meeting.

SHAWNEE, O. T., *Apr. 13th*, 1905.

A special meeting of the stockholders of the Shawnee Compress Company is hereby called to be held at the company's office in Shawnee, Monday, April 24th, 1905, at 11.00 A. M.

J. M. AYDELOTTE, *President.*

EXHIBIT (20).

MINDEN, LA., *Feb. 16th*, 1905.

Shawnee Compress Co., Shawnee, O. T.

GENTLEMEN: Yours 7th, received and noted and will ask you to please write us how much you owe the bank and what your total indebtedness is, giving an itemized statement.

You told us last year that if we would wait you would take in new stockholders and put $3500.00 or $4000.00 additional improvements in the platforms, and pay our notes this season which we carried over for you, but instead of this you have used the earnings of the press to put in the platforms, and still owe something at the bank which debt you are paying in advance of ours, and this is not in accordance with our agreement, and if we should extend the paper, the question with us is, would you not do the same thing next year, and will ask you to write us very clearly and positively along this line.

You evidently knew that you were not going to meet these notes that we sent out there for collection, in time to have written us and we think you should have done so as it is usual for parties to write when they are not able to pay.

278 Would like also for you to send us the insurance policies in accordance with the contract. I hardly think it necessary to send a man there as we ought to be able to adjust this matter by correspondence, and will ask you to please write us promptly.

Yours truly, ROBT. D. WEBB, *Sec'y.*

279 EXHIBIT (12).

SHAWNEE, OKLA., *May 1st*, 1905.

We, the undersigned shareholders of the capital stock of the Shawnee Compress Company, hereby state that we are fully advised of the action of the stockholders of the said Shawnee Compress Company at their special meeting held on the 24th day of April, 1905, pursuant to a call issued therefor, and that we are advised of the action of the said stockholders in authorizing a lease of the plant to the Gulf Compress Company, for the period of five years, at the

annual rental of six thousand dollars and the obtaining of a loan from the said Gulf Com ress Company for the sum of six thousand dollars, in order to pay the indebtedness due the Shawnee National Bank in about the said sum, and the securing of the said loan by the execution of a second mortgage on the plant and property of the said Shawnee Compress Company and the action of the said stockholders in procuring an extension of the time of payment of the indebtedness due to the Webb Press Company Limited, and the action of the said stockholders in electing a new board of directors for the said corporation, and we hereby fully consent to the same, and ratify such action and all other actions had and taken at the said meeting.

J. H. PORTIS AND
H. T. DOUGLAS.

EXHIBIT (23).

MINDEN, LA., *May 24th*, 1905.

Shawnee Compress Co., Shawnee, O. T.

GENTLEMEN: Yours 22nd, and we will have to call your attention to the fact that we were willing to extend your paper with certain definite understanding in regard to time of payments on same, and we want it understood that if you fail to make any of these
280 payments on the dates specified it will mature all the paper, and with this understanding, will call your attention to the fact that you have already let May 15th, pass without paying us the installment of interest due then, or even mentioning it and we don't propose to extend the paper and let the dates for payment on the principal or the interest be treated indifferently, and unless you can meet your side of the agreement we will not extend this paper at all, and will give you to the 1st of June in which to pay this installment of interest due May 15th, or else we will make other disposition of the paper without any extension on same. I regret to have to write you this way but you force us to take a stand somewhere, apparently using us as a cat's paw because we are trying to be lenient in regard to the debt due us. If you could not pay this interest May 15th, you should have said so and not keep making extensions that you know you can't meet. We are not your enemies.

Yours very truly, ROB'T D. WEBB,
Sec'y. Sec'y.

EXHIBIT (11).

Shawnee:
Bla. AUG. 11, 1904.

Mr. W. H. Beatty, Sec. The Shawnee Compress Co., Shawnee, O. T.

DEAR SIR: Your favor of the 9th, with enclosure, is received and noted. As I have advised you previously, I am not willing to stand any assessments or advance any money to make repairs, therefore return your note.

If the Company is not able to advance for repairs now under way, I recommend that the stockholders be called upon to liquidate the entire outstanding indebtedness of the Company, and we can
281 stand ready to pay our pro rata part.

Yours truly,

——— ———.

Encl.

EXHIBIT (10).

SHAWNEE, OKLA., *August 9th*, 1904.

Mr. B. L. Anderson, Fort Worth, Texas.

DEAR SIR: Relative to improvements now in process, beg to advise good progress. Will nearly complete this week, (by 13th inst.) and as soon as complete will send statement of cost which is about in keeping with estimates with the exception of grading of lot and for side tracks, some $75.00, in excess, which we should get refunded from the railroad.

Please refer to my letters of the 26th and 29th ult. My arrangement with the Bank to meet these disbursements was only by temporary overdraft with the understanding as Secretary, I would obtain from the stockholders, funds to the extent of 3% from each on the stock, this being approximately pro rata needed. Several of the stockholders had given checks for the drafts drawn as per letter and statement of July 29th, and to such as is authorized by the Directors' meeting of June 17th, I have executed the company's note signed by Treasurer and Secretary payable Nov. 1st, 1904, and accordingly enclose you herewith similar note for your amount, $199.50 for which please mail me your check payable to H. T. D. Douglas, Treasurer.

These notes aggregating $1500.00, are the first maturing obligations of the Company and should be met promptly from the earnings without inconvenience and this disposition of the matter leaves, I personally believe, the Shawnee National Bank disposed to carry the indebtedness to them as long as desired by the Company.
282 Yours truly,

SHAWNEE COMPRESS COMPANY.
W. H. BEATTY, *Sec'y.* Sec'y.

(Dict.)
Enc. Note.

(19.)

EXHIBIT (9).

MINDEN, LA., *Feb. 2nd*, 1905.

Mr. W. H. Beatty, Shawnee, O. T.

DEAR SIR: We were very much surprised to hear first, that the note due Jan. 15th this year, was allowed to go to protest by the Shawnee Compress Company, and since, we learn that the note extended to Jan. this year has not been paid. In view of the fact that your people have not said anything to us about not being able to meet these notes, we thought of course you would meet

them when due, and would like very much for your people to pay the note due Jan. 1st, 1905.

Yours very truly,

WEBB PRESS CO., LTD.,
By N. R. GRIGSBY.

EXHIBIT (22).

MINDEN, LA., *Mar. 17th*, 1905.

Mr. W. H. Beatty, Sect. Shawnee Compress Co., Shawnee, O. T.

DEAR SIR: Yours 13th, and we will let the note extend over, and trust that your expectations in regard to dividends earned, will be realized.

Yours very truly, ROBT D. WEBB,
Sec'y. Sec'y.

EXHIBIT (15).

283 Received at 26 KM O Co.

Mgr. Shawnee:

Yours F. E. Anderson sgd. B and B deld o k at 1 P M si-ned for by F E Anderson s s s date.

JONES.

Okla. City Ap'l 25.
1.20 P. M.

EXHIBIT (16).

OKLAHOMA CITY, O. T., *Ap'l* 23, '05.

Mr. W. H. Beatty, Sec'y Shawnee Compress Co., Shawnee, O. T.

DEAR SIR: This will introduce to you, Mr. J. E. Wharmby who has been selected by me to audit the books of the Shawnee Compress Co., according to the authority given me by the late meeting of Stockholders, (Directors). Kindly give him all the facilities promptly so that he can get through without delay. I have employed him at the rate of $5.00 per day as suggested by you, and you will kindly settle with him when he completes the work.

Yours truly, F. E. ANDERSON, *V. P.*

EXHIBIT (13).

Telegram.

1 GU. O RO.....11 Collect 1 ex. 4: 28 Pm.

GUTHRIE, OKLA., *April 23rd*, 1905.

C. J. Benson, Shawnee, Okla.:

Articles on incorporation shawnee compress company call for three directors.

WILLIAM GRIMES, *Sec'y.*

EXHIBIT (1).

GUTHRIE, OKLA., *April 26th*, 1905.

I do hereby certify that the typewritten instrument hereto
284 attached is a true and correct copy of the Articles of Incorporation of the Shawnee Compress Co., as filed in this office July 18th, 1899 and recorded in Corporation Record No. 6, at page 85; of the increase of capital stock of said corporation filed in this office Dec. 4th, 1899 and recorded in Corporation record No. 7 at page 268; and of the increase of capital stock of said corporation filed in this office July 18th, 1901, and recorded in Corporation Record No. 8 at page 89.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the Territory the date first above written.

[SEAL.]

WILLIAM GRIMES,
Secretary of Oklahoma Territory.

285 *Articles of Incorporation of Shawnee Compress Company.*

The undersigned, citizens of the Territory of Oklahoma, do hereby voluntarily associate ourselves together for the purpose of forming a private corporation under the laws of the Territory of Oklahoma and do hereby certify; First. That the name of this corporation shall be The Shawnee Compress Co. Second. That the purpose for which this corporation is formed is to construct and operate a cotton compress in the City of Shawnee, County of Pottawatomie, Territory of Oklahoma, for the purpose of receiving, compressing, weighing, storing, buying, handling, selling and ginning cotton. Third. That the place where its principal business is to be transacted be at Shawnee, O. T. Fourth. That the term for which this corporation is to exist is fifty years. Fifth. The number of Directors or Trustees of this incorporation, and the names and residences of such of them who are to serve until the election of such officers, and their qualification, are five, as follows; C. M. Cade, W. S. Search, J. M. Aydelotte, E. B. Keeling, A. J. Dossett. Sixth. That the estimated value of the goods, chattels, lands, right, and credits owned by the corporation is Eleven Thousand ($11,000) dollars. That the amount of capital stock of this corporation shall be Eleven Thousand ($11,000) Dollars, and shall be divided into One Hundred and Ten shares, of one Hundred Dollars each.

In testimony, Whereof, we have hereunto subscribed our names this — day of —— A. D. 189–.

C. M. CADE, *Shawnee, O. T.*
W. S. SEARCH, Do.
J. M. AYDELOTTE, Do.
A. J. DOSSETT,
Meridian, Miss.

TERRITORY OF OKLAHOMA, *Pottawatomie County, ss:*

Personally appeared before me, a Notary Public in and for
286 said County and Territory above named, C. M. Cade, W. S. Search, J. M. Aydelotte and A. J. Dossett who are personally known to me to be the same persons who executed the foregoing instrument of writing and duly acknowledged execution of the same.

In Testimony Whereof, I have hereunto subscribed my name and affixed my Notarial Seal, this 17th day of July, A. D. 1899.

[SEAL.] C. J. BENSON,
Notary Public.

My commission expires Apr. 23, 1900.
(10c. I. R. Cancelled.)

SHAWNEE, O. T., *Nov.* 2, 1899.

We, the undersigned, Stock-holders of the Shawnee Compress Company, (a corporation) of Shawnee, O. T., do hereby consent that the Capital Stock of said Corporation, shall be increased from $11,000 to $16,000, and do hereby authorize the Secretary of said Company to obtain from the Secretary of the Territory, a certificate authorizing said increase of Capital.

In witness whereof we have hereunto set our hands and the amount of stock opposite our names owned by each.

Name: E. B. Keeling, Amount of stock owned $2500.00, Chas. T. Deeter, $200, C. J. Benson $500.00, H. T. Douglas by C. J. Benson $500.00, C. M. Cade $1000.00, Harry Mead $500. A. E. Nelson $500.00, W. S. Search $500.00, A. J. Dossett $2000.00, J. M. Aydelotte $1000.00.

SHAWNEE, OKLA., *Nov.* 11, 1899.

This is to certify that at a meeting of the stockholders of the Shawnee Compress Company of Shawnee, O. T., upon a written call a copy of which notice is as follows: "you are hereby notified that a meeting of the Stockholders of the Shawnee Compress Company will be held in the office of the Shawnee National Bank on November 11, 1899, at 7:30 P. M. for the purpose of increasing the capital stock of said company to $16,000.
287 A. J. DOSSETT, *Secretary.*

The following resolutions were passed: moved and carried that the secretary of the Company be authorized to make application to the secretary of Oklahoma Territory, for permit to increase the capital stock of this company to $16,000. That said motion was seconded to by the stockholders holding and owning a majority of capital stock of said company; that the written consent for the increase of the capital stock of said company, was signed by stockholders holding and owning $9800 of the present capital Stock of said Company; said amount being more than ¾ of the subscribed capital stock, is hereto attached and made part of this certificate.

In witness whereof we have hereunto set our hands this 13th day of November, 1899.

A. J. DOSSETT, *Secretary.*

W. S. SEARCH, *President.*

[SEAL.]

C. M. CADE,
J. M. AYDELOTTE,
W. S. SEARCH,
A. J. DOSSETT,
Directors.

SHAWNEE, O. T., *Nov.* 13, 1899.

Hon. Wm. M. Jenkins, Secretary of the Territory, Guthrie, Oklahoma.

DEAR SIR: We beg to make application to have the Capital Stock of the Shawnee Compress Company increased to $16,000 and beg to enclose you herewith, a certificate conforming to Chapter 17, Section 18, page 237 of the Statutes of the Territory of Oklahoma for the year 1893, showing a compliance with the regulations of that Section. We would be pleased to have you issue the necessary authority or permit and we will mail you a check for the required fees.

Yours very truly,

A. J. DOSSETT,

288 *Secretary of Shawnee Compress Company.*

W. S. SEARCH,
President of Shawnee Compress Co.

JULY 1ST, 1901.

Hon. Wm. Grimes, Sec'y of the Territory, Guthrie, O. T.

DEAR SIR: We beg to make application to have the capital stock of the Shawnee Compress Company of Shawnee, O. T., increased to Fifty Thousand (50,000.00) Dollars, and beg to enclose you herewith a certificate conforming to Chapter 17, Section 18, page 237, of the Statutes of the Territory of Oklahoma for the year 1893, showing a compliance with the regulations of that Section. We would be pleased to have you issue the necessary authority or permit, and we will mail you a draft for the required fees.

Yours very truly,

[SEAL.]

C. J. BENSON,
Sec'y Shawnee Compress Company.

SHAWNEE, OKLA., *July 1st,* 1901.

This is to certify that at a meeting of the stockholders of the Shawnee Compress Company of Shawnee, O. T., held in the officer of the Shawnee Nat'l Bank in Shawnee, O. T. On June 10th, 1901, at 8 o'clock P. M., said meeting be- an adjourned meeting of the regular annual meeting held at the same place on June 4th, 1901.

The following resolutions were passed, assented to and signed by the following named stockholders, to wit: J. M. Aydelotte, A. E. Nelson, H. T. Douglas, A. M. Graves, C. J. Benson, E. W. Cheatham and John M. Butcher, who are the owners and holders of all the capital Stock of the Shawnee Compress Company amounting to $16,000.00, which is the present Capital Stock of said Company. A copy of said resolution, signed and sworn to by all the above named stockholders is hereto attached and made a part of this certificate.

289 In Witness Whereof we have hereunto set our hands this 1st day of July, 1901.

[SEAL.]

C. J. BENSON,
Sec'y S. Com. Co.

J. M. AYDELOTTE,
Pres. S. Com. Co.

We, the undersigned, Stockholders of the Shawnee Compress Company, located in the City of Shawnee, County of Pottawatomie, Territory of Oklahoma, having a capital of Sixteen Thousand ($16,000.) Dollars, do hereby authorize and empower the Directors thereof to increase the Capital of said Corporation to Fifty Thousand ($50,000.) Dollars; we do also authorize said Directors or a majority thereof, to execute the Articles of Incorporation or other paper and certificates and to do all necessary acts to be done to increase said Capital Stock to $50,000, which is required by the Secretary of the Territory to make such change absolute and complete. It being understood and agreed that the increase of Thirty four Thousand (34,000) Dollars is to be divided or apportioned pro rata among the present stockholders, according to the amount of stock now held by each. That the old Stock Certificate shall be called in by the Secretary and cancelled, and a new Stock be issued to each stockholder in the amount he is entitled to as above stated. And we do hereby waive and accept service of the notice of the meeting at which the above resolution was passed; said meeting being held on the 10th day of June, 1901, at which the following stockholders were present, represented as follows: J. M. Aydelotee, 30 shares, H. T. Douglas, 5 shares, C. J. Benson 35 shares, A. E. Nelson, 28 shares, A. M. Graves, 19 shares, O. W. Cheatham, 19 shares, Jno. M. Butcher, 19 shares.

Witness our hands this 10th day of June, 1901.

J. M. AYDELOTTE.
A. M. GRAVES.
A. E. NELSON.
C. J. BENSON.
H. T. DOUGLAS.
D. W. CHEATHAM.
JOHN M. BUTCHER.

290 STATE OF TEXAS, *County of Red River:*

On this day personally appeared before me, the undersigned, a Notary Public for Red River County, Texas, A. M. Graves, D. W.

Cheatham and Jno. M. Butcher, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this the 18th day of June, A. D., 1901.

E. L. CANTENBURRY,
Notary Public for Red River County, Texas.

TERRITORY OF OKLAHOMA, *County of Pottawatomie, ss:*

Personally appeared before me W. P. Dix, a notary public in and for the county of Pottawatomie, Territory of Oklahoma, J. M. Aydelotte, A. E. Nelson, C. J. Benson, and H. T. Douglas, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes therein stated.

Given under my hand and seal of office, on this 21st day of June, 1901.

[SEAL.]

W. P. DIX,
Notary Public.

My commission expires March 23, 1902.

EXHIBIT (2).

GUTHRIE, OKLA., *May* 16, 1905.

I do hereby certify that the typewritten instrument hereto attached is a true and correct copy of the Articles of Incorporation and appointment of agent of the Gulf Compress Company, filed in this office August 22, 1904, and recorded in Corporation Record No. 14, pages 494-500.

291 In testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the Territory the date first above written.

[SEAL.]

WILLIAM GRIMES,
Secretary of Oklahoma Ter.

Declaration Made for the Purpose of Incorporating the "Gulf Compress Company."

Know ye, that we, the undersigned, desiring to form ourselves into a private corporation, do hereby make and file in the office of the Judge of Probate for Mobile County, the following declaration: We declare 1st, that the names and residences of the subscribers are Robert H. Smith, and Rittenhouse Smith, both of the city and county of Mobile, State of Alabama, and the name and style of the proposed corporation is "Gulf Compress Company." 2nd. That the general purpose of the corporation is to carry on a storage and compress business; the nature of the business intended to be carried on is the general storage and compress business, and the principal place

of business, or location of said corporation, is to be in the city and County of Mobile, State of Alabama, but with the right to do business anywhere in the United States. 3rd. The amount of the capital stock of said corporation is to be twenty five thousand dollars, consisting of two hundred and fifty shares of the face value of one hundred dollars each, with the privilege, however, of from time to time increasing its capital stock in the manner and to the extent provided by the general incorporation laws of the State of Alabama. 4th. The stockholders' meetings and meetings of the board of directors may be held, and all kinds of corporate acts may be done and performed in any and all of the states of the United States.

Witness our hands this 22nd day of July, 1902.

[SEAL.] ROBERT H. SMITH.
RITTENHOUSE SMITH.

Commission to Open Books of Subscription to the Capital Stock of the "Gulf Compress Company."

STATE OF ALABAMA, *County of Mobile:*

292 To whom these may come, Greeting:

Know ye, That Robert H. Smith and Rittenhouse Smith of Mobile Ala., having filed in my office, as Judge of the Probate Court of said County, a written declaration of their intention to form themselves into a private corporation under the name of "Gulf Compress Company," and it appearing that the said declaration is in due form as required by Sections 1251 and 1252 of the Civil Code of Alabama, of 1896.

Now, therefore, I, Price Williams, Jr., Judge of the Probate Court of Mobile County, hereby constitute and appoint the said Robert H. Smith and Rittenhouse Smith of Mobile, Alabama, Commission-s, and authorize them as such Commissioners, to open books of subscription to the capital stock of said Gulf Compress Company at such time and place as they may appoint, and to do all other acts proper and necessary to be done by them, as such Commissioners, in order to perfect and complete the organization and incorporation of said Company.

In witness whereof, I have hereunto set my hand and seal of the said Probate Court, this the 23rd day of July, 1902.

PRICE WILLIAMS, JR.,
[SEAL.] *Judge of Probate, Mobile County.*

Books of Subscription to the Capital Stock of the Gulf Compress Company.

We, the undersigned, hereby subscribe to the number of shares of the Capital Stock of the Gulf Compress Company, set opposite to our names, and bind ourselves respectively to pay for the same in money, upon demand by such person as may be authorized to collect it.

Date of subscription	Signature of subscriber.	No. of shares subscribed for.
July 29th, 1902.....	Harry T. Smith.....	One share.
July 29th, 1902.....	Rob't H. Smith.....	One share.
July 29th, 1902.....	Rittenhouse Smith ...	One share.
July 29th, 1902.....	J. Blocker Thornton..	One share.
July 29th, 1902.....	A. W. Walton.....	One hundred and twenty two shares.

We, the undersigned commissioners, appointed by Judge of Probate to open books of subscription to the Capital Stock of the Gulf Compress Company hereby certify that we believe the foregoing subscriptions to the capital stock of the Gulf Compress Company, to have been made in good faith, and that we are satisfied with the solvency of the said subscriber, and that said subscription covers more than fifty per cent of the proposed capital stock of said company.

ROBERT H. SMITH,
RITTENHOUSE SMITH,
Commissioners.

STATE OF ALABAMA, *County of Mobile:*

Personally appeared before me, Rit Smith, a notary public in and for said state and county, Harry T. Smith, who being first duly sworn, deposes and says that he is the person who was duly appointed at a meeting of the subscribers to the Capital Stock of the Gulf Compress Company, held on the 28th day of July, 1902, to receive the subscriptions to the capital stock of said Company, and that said subscription was at said time and place delivered to him, and that he has received in cash the full amount of the subscriptions of Harry T. Smith, Robert H. Smith, Rittenhouse Smith, and J. Blocker Thornton, being for one share each and aggregating four hundred dollars, and has received twenty per cent. of the subscriptions of A. W. Walton, being for one hundred and twenty two shares, the amount paid to me thereon aggregating $2,440.00 and that the foregoing is a true and accurate copy of said sub-
294 scription delivered to him, and upon which he has made said collections.

HARRY T. SMITH.

Subscribed and sworn to before me this 30th day of July, 1902.

[SEAL.]

RIT SMITH,
Notary Public, Mobile County, Alabama.

Proceedings of the Subscribers to the Capital Stock of the Gulf Compress Company to Organize said Company.

More than fifty per cent. of the proposed capital stock of the Gulf Compress Company, having been subscribed in good faith by the undersigned, of whose solvency the commissioners appointed to open books of subscription are satisfied, the said commissioners called said subscribers together on this the 29th day of July, 1902, at the office of Gregory L. and H. T. Smith, in the City of Mobile, State of Alabama, at the hour of one o'clock, P. M., for the election of a board of directors and other officers, and for the further organization of said company, at which said meeting the following proceedings were had; J. Blocker Thornton called the meeting to order, and stated the purpose thereof. Thereupon the motion was made by Mr. Robert H. Smith which was duly seconded, that Mr. J. Blocker Thornton be elected as the temporary chairman of the meeting. The motion being put to the house, was unanimously carried, and Mr. J. Blocker Thornton was declared duly elected as the temporary chairman of said meeting. The motion being put to the house, was unanimously adopted. Upon motion of Mr. Robert H. Smith, duly seconded, it was resolved that the board of directors of said company consist of four members, to be elected by the stockholders of said company. This motion being put to the house was unanimously adopted. Upon the motion of Mr. A. W. Walton, duly seconded, the following stockholders were elected as directors of said company; Mr. A. W. Walton, Mr. Robert H. Smith, Rit Smith and J. Blocker Thornton. Upon the motion of Harry T. Smith, duly seconded, Mr. A. W. Walton was
295 elected from amongst the directors or president of said corporation. Upon the motion of Harry T. Smith, duly seconded, it was resolved that the officers of said corporation consist of a president and of a secretary and treasurer. Upon the motion of A. W. Walton, duly seconded, Mr. Robert H. Smith was duly elected as the treasurer and secretary of said Company. Mr. Harry T. Smith then moved, his motion being duly seconded, that the chairman of the meeting appoint from the stockholders, a committee of two to prepare and present to this meeting a set of by-laws for the government of this corporation. This motion, being duly put to the house, was carried, and the chairman thereupon appointed as such committee, Mr. Harry T. Smith and Mr. Robert H. Smith. Thereupon the committee so appointed retired, and after conference reported to the meeting that they had prepared and now present, for the government of this company, a set of by-laws, a copy of which is hereunto attached, marked "Exhibit A," and made a part of the minutes of this meeting. Mr. A. W. Walton thereupon moved that the report of the committee be received, and that the bylaws so prepared and presented be adopted as the by-laws for the government of this corporation. The motion, being duly seconded, was put to the house and unanimously adopted. It was thereupon moved by Mr.

A. W. Walton that Mr. Harry Smith be designated as the officer of the election of the stockholders, to receive from the subscribers the subscriptions for the capital stock of the Gulf Compress Company, and that he, the said Harry T. Smith, shall forthwith require of the subscribers to the capital stock of the said company, the payment in cash, of at least twenty per cent. of their subscriptions, the said Harry T. Smith to make a copy of said subscription and verify the same by affidavit, stating in his affidavit from which of the subscriber- he has received payment in cash of twenty per cent., and file the same in the office of the Probate Court of Mobile County;
296 he is also instructed to receive the minutes of the meeting of the organization, and to return the same to the Probate Court of Mobile County, and to receive from said court the certificate of incorporation of the said company, and to deliver the same to the secretary and treasurer of said company. This motion being duly seconded, was put to the house and unanimously adopted, and Harry T. Smith was thereupon declared elected as set forth in the motion. This being all the business before the house, Mr. Robert H. Smith thereupon moved that the meeting adjourn, which motion, being duly seconded, was put to the house and carried.

In witness of all of which, we, the subscribers to the capital stock of the Gulf Compress Company present at said meeting, have caused this minute of the foregoing proceedings to be reduced to writing and signed by us and delivered to Robert H. Smith and Rittenhouse Smith, the commissioners appointed to open books of subscription to the capital stock of the Gulf Compress Company, this the 29th day of July, 1902.

HARRY T. SMITH.
J. BLOCKER THORNTON.
A. W. WALTON.
ROBT. H. SMITH.
RITTENHOUSE SMITH.

EXHIBIT "A."

By-laws of the Gulf Compress Company, Adopted by the Stockholders of that Company at Their Meeting Held at the Office of Gregory L. and H. T. Smith, in the City of Mobile, on the 29th Day of July, 1902, at the Hour of One o'clock P. M.

Be it resolved by the stockholders of the Gulf Compress Company that they had and do hereby adopt the following by-laws for the government of the Gulf Compress Company, a corporation organized in the County of Mobile under the laws of the State of Alabama; First. That this corporation is organized under the laws of the state of Alabama, and by virtue of the proceedings had in the Pro-
297 bate Court of Mobile County in the State of Alabama and the certificate of incorporation to be issued by the judge of the probate Court of Mobile County, Alabama. Second. That the business to be carried on by this company shall be as set out in the

declaration of incorporation which was filed in said proceedings. Third. That the principal office of this company shall be in the city of Mobile, Alabama, but branch offices or agencies may be established at any other points, both within and without the state of Alabama, whenever, in the opinion of the board of directors, such offices and agencies are necessary or desirable for the interest of said company. Fourth. The capital stock of said company shall be the sum of twenty-five thousand dollars, divided into shares of one hundred Dollars each, of which at least twenty per cent. shall be paid in at once as per subscriptions of the stockholders, which are as follows; Rittenhouse Smith, one share; J. Blocker Thornton one share; Robert H. Smith, one share; Harry T. Smith, one share; and A. W. Walton, one hundred and twenty shares. The capital stock above recited may be increased from time to time to any amount not exceeding five hundred thousand Dollars. Certificates of stock shall issue to each stockholder when and as his subscriptions are fully paid up which said certificates shall be signed by the president and also by the secretary and treasurer. All transfers of stock shall be made upon the books of the company by the owner in person or by his attorney duly authorized in writing. No certificate shall be issued for less than one share, and the corporation shall have a lien upon the stock of each stockholder for all indebtedness due by said stockholders to the corporation. Every certificate of stock shall be in words and figures, substantially, as follows:

Gulf Compress Company.

No. —— —— shares.

This certifies that —— —— is the owner of —— shares of
298 the capital stock of the Gulf Compress Company, on which —— Dollars a share have been paid in. Transferable only on the books of said company in person or by attorney upon surrender of this certificate.

—— —, 190–.

—— ——, *President.*

Fifth. This company shall be governed by a board of directors, consisting of four members, who shall be elected annually by the stockholders at their annual meeting, to be held on the last Tuesday of each July. The number of the directors may be increased to five, or decreased to not less than two, at any meeting of the stockholders. Sixth. The officers of this company shall be a president, and a secretary and treasurer, and shall be elected by the Directors at their first meeting after their election each year. None of the officers above named, except the president, need be a stockholder in the company. All of said officers shall be elected at this meeting, the president to serve for one year; the other officers to hold their respective offices at the pleasure of the board of directors, and their term of service may be ended at any time by the board. Seventh. The Directors shall meet in regular session semi-annually on the last Tuesday in January and

July of each year. The president may call a meeting of the directors at any time and place upon notice to each director. Eight. All notes, drafts, and other commercial paper signed by the President and countersigned by the treasurer. All vouchers for bills or accounts, or any other purpose, shall be audited and approved for payment by the president. All checks shall be signed by the treasurer and countersigned by the president. All deeds, mortgages, leases and contracts and other papers commonly executed under seal shall be executed in the name of the company by the president and have attached thereto the seal of the company attested by the secre-
299 tary. The seal of the company shall be as follows; a disk bearing the words "Gulf Compress Company incorporated July 29th, 1902," around the edge, and the words, "Mobile, Alabama," in the center. Ninth. The president shall be the executive head of the board of directors and of the company, and shall do and perform all such matters and things as are usual and incident to the office of president of corporations of like character. It shall be the duty of the secretary and treasurer to attend all meetings of the board of directors, and make a minute of its proceedings and enter the same upon the records of the company. He shall also keep the accounts of the company, its securities, funds and contracts under the supervision of the president, and he shall perform such other duties as the president may direct. Tenth. The board of directors may appoint such other agents and officers as it may seem proper at any called or regular meeting. Eleventh. Any of the foregoing rules may be changed, annulled, or added to, at regular or called meeting of the stockholders of this corporation.

Certificate of Incorporation of the Gulf Compress Company.

STATE OF ALABAMA, *County of Mobile:*

To all whom these may come, Greeting:

Know ye, That I, Price Williams, Jr., Judge of the Probate Court of Mobile County, do hereby certify that Robert H. Smith and Rittenhouse Smith and their associates and successors, have been and are hereby declared to be duly organized as a private corporation, under the name and style of Gulf Compress Company, for the purpose of conducting a storage and compress business, viz.: the general storage and compress business and with all the powers, capacity and authority conferred by law upon such corporations.

In Witness Whereof, I have hereunto set my hand and the seal of the Probate Court of Mobile County, this the 30th day of July, 1902.

[SEAL.] PRICE WILLIAMS, JR.,
Judge of the Probate Court, Mobile Co.

300 To the Honorable Price Williams, Junior, Judge of the Probate Court of Mobile County, Alabama:

In accordance with the provisions of the Act of the General Assembly of Alabama approved March 4th, 1901, and entitled "An Act

to authorize mining, quarrying, and manufacturing corporations and other private business corporations to hold meetings of stockholders and directors and to do and perform corporate acts in other States or state of the United States," the Gulf Compress Company, a corporation duly organized under the laws of the State of Alabama, and having an office and place of business in Mobile, Alabama, does hereby make and file in your office this statement signed by its president and attested by its secretary and treasurer, showing hereby that it has appointed Harry T. Smith, who resides in Mobile, Alabama, as its agent, and that service of process upon the said Harry T. Smith, will be deemed and taken as service of process upon this corporation.

A. W. WALTON, *Pres't.*

Attest:
ROB'T H. SMITH,
Secretary and Treasurer.

UNITED STATES OF AMERICA, *State of Alabama:*

In the Probate Court of Mobile County.

I, H. O. Hanie, Clerk of the Probate Court in and for said County and State, do hereby certify that the annexed document is a true and correct copy of the Articles of Incorporation of the Gulf Compress Company of Mobile, Alabama, as the same appears on record in the said Probate Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court at this office in the City of Mobile, this the 9th day of August in the year of our Lord, one thousand nine hundred and four and of the Independence of the United States the 129th year.

[SEAL.] H. O. HAYNIE,
Probate Clerk.

301 STATE OF ALABAMA, *Mobile County:*

I, Price Williams, Jr., sole judge of the Probate Court of Mobile County, in the State of Alabama, do here certify that H. O. Haynie is the Clerk of said Court; that the same is a Court of Record, having probate jurisdiction, and that the signature of H. O. Haynie, Clerk, to the foregoing certificate is in proper handwriting of him, the said H. O. Haynie, Clerk; to his official acts as such, full faith and credit are due and owning; and I do further certify that his attestation is in due form of law.

Given under my hand and seal of said Court, in the city of Mobile, on this 9th day of August A. D., 1904.

[SEAL.] P. WILLIAMS, JR.,
Probate Judge.

I, H. O. Haynie, Clerk of the Probate Court of Mobile County in the States of Alabama, do hereby certify that Price Williams, Jr., whose genuine signature appears to the foregoing certificate, is now

and was at the time of signing the same, sole Judge of the Probate Court of Mobile County, duly elected and commissioned, and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court, this 9th day of August, A. D., 1904.

[SEAL.] H. C. HAYNIE, *Clerk.*

The undersigned hereby certify that the foregoing is a full, true, and correct copy of the charter or articles of incorporation of the Gulf Compress Company, organized in strict accord with the laws of the state of Alabama, and that said charter has been duly recorded in said State.

This 16th day of July, Nineteen Hundred and Four.

C. C. HANSON, *President.*

Attest:

[SEAL.] R. E. L. MARTIN, *Secretary.*

(OKLAHOMA:)

Know all men by these presents, That the Gulf Compress Company, a corporation duly organized, created and existing
302 under and by virtue of the laws of the State of Alabama, having its principal office and place of business in the City of Memphis Tennessee, does hereby designate and appoint Charles T. Turner, residing in the City of Oklahoma, in the Territory of Oklahoma, who being a citizen of said Territory, as its agent for the said Oklahoma Territory, upon whom service of summons and all other legal process may be had and made, and all actions or proceedings against said corporation in any of the courts in said Oklahoma Territory, according to the laws thereof. The said corporation hereby designates the City of Oklahoma, in said Territory of Oklahoma, as its principal place of business in said Territory.

In testimony whereof the said corporation has, by its president, caused these presents to be signed, and sealed with its corporate seal at the city of Memphis, Tennessee, on this 25th day of July, 1904.

GULF COMPRESS COMPANY.

C. C. HANSON, *President.*

EXHIBIT 25. 109.

Telegram.

Received at 25 K. M O MQ 24 Paid. Th. Oklahoma City, Okla. April 25-05.

C. C. Hanson, Shawnee, Okla., care Beatty and Stubbs, Shawnee, Okla.:

I will reach Shawnee about three twenty on Choctaw delay negotiations until then and meet train and I will give you some valuable information.

B. L. ANDERSON.

1-45 P M.

303 EXHIBIT 26.

Admit.

Telegram. 4/25.

No. Nm Sent by o Rec'd by cw 32 Paid.
Received at 10-45 A. Dated Okla. City, O. T.

To C. C. Hanson, c/o cond'r Westbound train:

There is a trick on at Shawnee I will arrive there about three twenty on Choctaw Please quietly meet my train If you lease traders company will build immediately Shawnee and Okla. City.

B. L. ANDERSON.

Mar. 3-1905.

EXHIBIT 27.

SHAWNEE, OKLA., *Mar.* 3, 1905.

Mr. F. E. Anderson, Okla. City.

DEAR SIR: Can't you come over next few days. I want to have a conference with you relative to future of the Press here.

Yours truly, H. T. DOUGLAS.

EXHIBIT 5.

(Copy.)

(At Atlanta.)

MEMPHIS, TENN., *April* 18, 1905.

Mr. W. H. Beatty, Secretary Shawnee Compress Co., Shawnee, Okla.:

DEAR SIR: With reference to our conference in Memphis a few days ago; I beg leave to submit herewith our formal lease proposition; Rental; $6000.00 per annum; term of lease to be five years from September 1, 1905: conditions to be substantially as set forth in the enclosed memorandum. In making this formal offer I desire to submit a few reasons why, as I see it, you can afford to lease us your property for a term of five years at the figures offered
304 or say, possibly less than the plant is now netting you or what may be considered as a net income in sight during the next five years. Our getting together on a lease proposition means the avoiding for each other, directly or indirectly, of the possibility, if not probability, of unnecessary competition. We being neither buyers or sellers of cotton for our own account or for the account of others, have a general, but not a specific following, which is healthful to all markets as compared with the condition existing where the policy of a compress company is dictated by a set of buyers. To

illustrate; The Lesser Goldman Cotton Co. dictated by *a* have expressed a willingness to open up an office at Shawnee, provided we get control of your plant. They have, as I remarked to you some time ago, been considering the advisability of moving to Shawnee one of their surplus plants for the purpose of handling their own purchase in that section. Again the compress business has been, and will continue to be of a hazardous character. Carriers, both rail and water, are demanding and getting greater density and heavier car loading and as a result increased strain is being placed on machinery speed of operation slowed down, more fuel consumed and labor required, and operating expenses thereby considerably increased; consequently serious accidents to compress machinery are of more frequent occurrence than heretofore. Will state, by way of more exact illustration, that out of the forty-odd compresses operated by the two companies of which I am president, we are averaging from two to three extraordinary breakdowns to machinery per year, the cost of repairing ranging from $2500.00 to $12,50 each. We feel reasonable certain that if you and your people will seriously consider all of the risks, worries and trouble of the management and operation of the property, the uncertainties of financial results, due to short crops, immediate or nearby competition and the numerous other things that have been mentioned in our dis-
305 cussion, *versus* the insurance from us of getting your rents monthly, and at the end of five years getting your property back in the same condition it was when you turned it over to us, you will look with favor upon leasing to us on the basis submitted.

Very truly yours, C. C. HANSON.

This letter read to stockholders on meeting April 24/05.

W. H. BEATTY, *Sec'y.*

EXHIBIT 28.

SHAWNEE, O. T., *April* 24, 1905.

Mr. F. E. Anderson, Okla. City, O. T.

DEAR SIR: In our recent effort to secure a large block of stock for you in the Shawnee Compress Co. it seems that we will not be successful with the figure you left with us which I believe was 15c. I remember in answer to my question as to whether you would put that price on your stock, you said you would.

I believe I can place your stock, one hundred and thirty three shares at that figure as well as secure you a return of 3% assessment, which will be, say 17½ or 18c.

Let me know by telephone as early as you can answer me on this and very much oblige,

Yours truly, H. T. DOUGLAS.

306 EXHIBIT 29.

Neil P. Anderson & Co., Cotton.

Shawnee.

FORT WORTH, TEXAS, *Jan.* 25, 1905.

Mr. F. E. Anderson, Oklahoma City, O. T.

DEAR SIR: One of the Fort Worth banks has just presented a note given by the Shawnee Compress Co. and signed by J. M. Aydelott, President, to the Webb Press Co., October 1st, 1901, for $2250, with interest since May 15th, 1904. The note is a series of eight, aggregating $18,000, all secured by deed of trust to the entire compress plant at Shawnee. It seems the note went to protest on the 18th instant. Not knowing anything whatever about the matter, I of course told the bank that it was evidently sent here by mistake. What do you know about it?

Yours truly, B. L. ANDERSON.

307 *Statement of Shawnee Compress Company, Mar.* 31, 1904.

Folio.	Name or a/c.	Trial balance.		Profit & loss.		Statement.	
		Debits.	Credits.	Loss.	Gain.	Resources.	Liabilities.
72	Plant	43678 42				43678 42	
81	Compressing		12218 86		12218 86		
86	Labor	4691 80		4691 80			
95	Supply	1139 81		79 81		1060 00	
100	Salaries	2108 99		2108 99			
108	Expense	790 28		790 28			
116	Fuel	809 83		809 83			
120	Insurance	1780 94		1780 94			
128	Capital stock		24753 15				24753 15
130	Interest	976 23		976 23			
134	Bills payable		19381 03				19381 03
140	Shawnee Nat'l Bank	881 64				881 64	
150	Drayage	504 55				504 55	
152	Watchman	421 00		421 00			
154	Taxes	158 50		158 50			
156	Bank a/c		362 10		362 10		
173	F. S. Douglas	52 10				52 10	
198	Sample cotton		1328 95		1328 95		
200	Rent a/c	50 00		50 00			
	Profit and loss			2042 53			2042 53
		58044 09	58044 09	13909 91	13909 91	46176 71	46176 71

308 EXHIBIT 24.

Bills pay.:

Webb	$11250	
In'st to May 15/04	1603	now being paid by 3% assent.
Our Bank	8131	
	20984	

Less quick assets good		
$881.64		
504.55		Net debt $18538
1060.00	2446	

Assent now being paid in 1500
Leaves net debt $17038 5/14.

BEATTY.

309 EXHIBIT B.

Shawnee Compress Company.

Copy of By-Laws as Adopted in Stockholders' Meeting June 17, 1904.

ARTICLE 1. SECTION 1. The management of the affairs of this corporation shall be vested in a Board of Nine Directors, who at all times shall be stockholders of the Corporation; they shall hold office for a term — one year or until their successors are elected and duly qualified.

SECTION 2. If the office of any Director shall become vacant by reason of death, resignation or disqualification, the remaining directors, at their first meeting or as soon thereafter as is practicable after such vacancy occurs, shall by a majority of votes, elect a successor who shall hold office for the unexpired terms.

SECTION 3. The Board of Directors, elected at a meeting of the stockholders, shall hold a meeting im-ediately after the adjournment of the stockholders' meeting, or as soon thereafter as is practicable, for the purpose of electing the officers of the corporation for the ensueing year.

SECTION 4. A special meeting of the Board of Directors may be called at any time by the President and shall be called at any time by him upon the written request of the majority of the directors.

SECTION 5. A majority of the directors shall constitute a quorum for the transaction of the business.

SECTION 6. The President shall have the power to employ a superintendent subject to the approval of the Executive Board.

SECTION 7. None of the directors or any of the elective officers of the corporation shall receive or be paid any compensation for services rendered.

310 SECTION 8. The Board of Directors shall select three of their own number as an Executive Com-ittee.

Officers of the Corporation.

ARTICLE 2. SECTION 1. The officers of the Corporation shall consist of a president, vice president and secretary and treasurer, who shall be elected by the board of directors, from among the stockholders, by a majority ballot at the meeting of the said Board after its election.

SECTION 2. The officers of the corporation shall hold office for one year from the date of the annual meeting of the stockholders or until their successors are elected and qualified. (See section 3-next.)

SECTION 4. The president shall preside at all meetings of the directors and stockholders, appoint all committees, execute all contracts and agreements authorized by the board of directors, sign all certificates of stock and attend to the general management of the business of the Corporation.

SECTION 3. The offices of Secretary and Treasurer may be held by one and the same person.

SECTION 5. The Vice President shall be vested with all the necessary powers to perform all the duties of the president during his absence.

SECTION 6. The Secretary shall keep a correct minute of all the meetings of the board of directors and stockholders, and issue all notices and attest all drafts, orders or checks drawn by the superintendent of the corporation under authority, and shall receive daily reports from the Supt., and keep such records and make such statements from same as Executive Commitee may order or direct. Immediately after the adjournment of the annual meeting of the stockholders the sec'y shall give notice to the members of the board of directors of *this* election as *a* member- of the board.

SECTION 7. The Secretary shall be the Register of transfers of stock and stock certificates, and when signed by the Presi-
311 dent, shall be countersigned by him.

SECTION 8. The treasurer shall receive and accept for all money due the corporation and pay all orders or drafts drawn by the superintendent of the corporation, under proper authority, and shall have charge of all funds of the corporation and keep a full and accurate record of all receipts and disbursements. At all directors' meetings he shall give a statement of the cash on hand and shall furnish the annual meeting of the stockholders, and at such other meetings as the directors may direct, a full and accurate account of all receipts and disbursements, and statement of the financial condition of the corporation.

Stockholders' Meetings.

ARTICLE 3. SECTION 1. The annual meeting of the stockholders of this corporation shall be held on the first Tuesday in June each year, at the office of the corporation in Shawnee, Okla., when they shall elect by a plerality vote by ballot, the board of nine directors to serve for the ensueing year.

SECTION 2. At the annual meeting, and at all special meetings, each stockholder shall be entitled to one vote, either in person or by proxy, for each share of stock standing registered in his or her name, at the time of such meeting.

SECTION 3. Notice of the annual meeting shall be given by the directors by mailing a notice at least ten days before the date of such meeting, to each stockholder of record, at their last known postoffice address.

SECTION 4. Special meetings of the stockholders shall be called by the secretary by mailing a notice, at least ten days prior to the date of such meeting, to each stockholder, at the request in writing, or by vote of the majority of the Board of directors, or at the request in writing by stockholders of record owning a majority in
312 amount of the outstanding capital stock of the corporation.

Stock.

ARTICLE 4. SECTION 1. All certificates of stock of the capital of the corporation shall be signed by the president and secretary.

SECTION 2. All transfers of stock shall be made upon the books of the corporation by the holders of the shares, in person, or by their legal representative.

SECTION 3. All certificates of stock surrendered shall be cancelled by the president or the secretary, at the time of transfer.

ARTICLE 5. SECTION 1. The corporate seal of the corporation shall have thereon the name of the corporation.

ARTICLE 6. SECTION 1. The by-laws may be amended or altered at any meeting of the board of directors by a majority of the board vote or by a majority vote of the stockholders, at any meeting, whether called for that purpose or not.

Amendments and Alterations Adopted — Stockholders' Meeting, Held in Co.'s Office April 24, 1905.

Resolution of Stockholders.

Resolution of stockholders of the Shawnee Compress Company, at the meeting duly called held on the 24th day of April, 1905; resolved that whereas the Articles of Incorporation and the Charter of the Shawnee Compress Company fixes the number of the Board of Directors of said corporation at three, and Whereas Section One of Article one of the by-laws of said corporation, fixes the board of directors at nine, therefore be it resolved that Section One of Article One of the by-laws of said corporation, be amended so as to read as follows:

SECTION 1. "Management of the affairs of this corporation shall be vested in a board of three directors, who at all times shall be stockholders; they shall hold their office for a term of one year or until their successors are elected and duly qualified; that
313 said original section One of the by-laws be and the same is hereby repealed; be it further resolved that in order to com-

ply with the Charter and Articles of Incorporation of said corporation, the following named persons be and are hereby elected as a board of directors of said corporation, to hold said office until their successors are elected and qualified, to wit: T. F. Stubbs, F. E. Anderson and W. H. Beatty.

Be it further resolved that said board of directors shall constitute an Executive Committee of said board, and that section Eight of the aforesaid by-laws, be and the same is hereby repealed, be it further resolved that Section One of Article Three of the aforesaid by-laws of this corporation, be and the same is hereby amended so as to read as follows:

SECTION ONE. The annual meeting of the stockholders of this corporation shall be held on the first Tuesday of June in each year, at the office of the corporation in Shawnee, Oklahoma Territory, when they shall elect by plurality vote, by ballot a board of three directors to serve for the ensueing year, and that said original Section One of Article Three, be and the same is hereby repealed.

We, the undersigned hereby certify that the above and foregoing resolutions and by-laws were adopted at a meeting of the stockholders of said corporation held in the city of Shawnee, Oklahoma Territory, on April 24/1905, by unanimous vote of the stock represented as set forth in the minutes of this meeting.

W. H. BEATTY.
T. F. STUBBS.

Attest:
W. H. BEATTY, *Sec'y.*

Continuation. April 24, 1905. *Sec'y's Minutes.*

Resolution of the Stockholders of the Shawnee Compress Company at the Meeting, Duly Called, Held on the 24th Day of April, 1905.

Resolved: That whereas the Articles of Incorporation and
314 the Charterof the Shawnee Compress Company fixes the number of the Board of Directors of said corporation, at three, and whereas Section One of Article One of the by-laws of said corporation, fixes the number of Board of Directors at Nine: Therefore be it resolved that Section One of Article One of the by-laws of said corporation be amended so as to read as follows:

SECTION ONE. Management of the affairs of this corporation shall be vested in a board of three directors, who at all times shall be stockholders; they shall hold their office for a term of one year, or until their successors are elected, and duly qualified; that said original section one of the by-laws, be and the same is hereby repealed. Be it further resolved that in order to comply with the Charter and Articles of Incorporation of said Corporation, the following named persons be and are hereby elected as a board of directors of said corporation to hold said office until their successors are elected and qualified, to wit: T. F. Stubb, F. E. Anderson, and W. H. Beatty. Elected by ballot, by unanimous vote of stockholders in order named as follows: W. H. Beatty, T. F. Stubb, F. E. Ander-

son; Be it further resolved that said board of directors shall constitute an executive commitee of said board and that section eight of the aforesaid by-laws be and same is hereby repealed.

Be it further resolved that Section One of Article Three of the aforesaid by-laws of this corporation be and the same is hereby amended so as to read as follows: Section 1. The annual meeting of the stockholders of this corporation shall be held on the first Tuesday of June each year at the office of the corporation in Shawnee, Oklahoma Territory, when they shall elect by plurality vote by ballot, a board of three directors to serve for the ensueing year, and that said original section one of Article Three, be and the same is hereby repealed. Motion to adopt carried.

315 Following is copy of certificate attached to said amendment as above of said by-laws. "We, the undersigned hereby certify that the above and foregoing resolutions and by-laws were adopted at the meeting of the stockholders of said corporation held in the city of Shawnee, Oklahoma Territory on April 24th, 1905, by unanimous vote of the stock represented as set forth in the minutes of the meeting."

W. H. BEATTY.
T. F. STUBBS.

Attest:
W. H. BEATTY, *Sec'y.*

On motion the meeting adjourned.

W. H. BEATTY, *Secretary.*

Secretary's Minutes.

Immediately upon adjournment of the stockholders' meeting the directors were called to order by Chairman F. E. Anderson, the *requisition* in writing of J. M. Aydelotte as President was presented and on motion accepted. An election of officers was held and the following named stockholders were elected: upon nominations duly seconded, voted upon separately in order named by unanimous vote: T. F. Stubbs, President, F. E. Anderson, Vice President, and W. H. Beatty Secretary and Treasurer. Ordered by the board that the books of the corporation both of the secretary and the treasurer and of the superintendent be audited by competent accountant, and that Mr. F. E. Anderson be and is hereby authorized to employ such accountant and have auditing done as early as practicable.

Upon Motion board adjourned.

W. H. BEATTY, *Secretary.*

SHAWNEE, OKLA., 3/10/05.

To the Board of Directors of the Shawnee Compress Company.

GENTLEMEN: I hereby tender you my resignation as President of your Company to take effect at once.

316 Yours very truly, J. M. AYDELOTTE.

(Accepted Motion.)
W. H. B., *Sec'y.*

Directors' Meeting of the Shawnee Compress Company, Held April 26th, 1905, at 4 o'clock P. M., in the Office of the Company in the City of Shawnee, Oklahoma.

Be it remembered that at a special meeting of the Board of directors of the Shawnee Compress Company, called by order of the President on April 25th, 1905, each and all of the directors having been duly notified of the time, place of the holding of the said meeting as by law provided. There were present; Mr. W. H. Beatty and Mr. T. F. Stubbs, being a majority of the board of directors. The meeting was called to order by the president at 4:05 P. M. On motion of Mr. W. H. Beatty, the board adopted the following resolution to wit: Be it resolved by the board of directors of the Shawnee Compress Company in meeting assembled that the president and secretary of this company be authorized and instructed to enter a contract of lease with the Gulf Compress Company, a corporation, organized under and by virtue of the laws of the state of Alabama, leasing all of the property of this corporation, (The Shawnee Compress Company,) to the said Gulf Compress Company, for the period of five years beginning Sept. 1st, 1905, and extending through the cotton seasons of 1905-'6, 1906-'7, 1907-'8, 1908-'9 and 1909-'10, for and in consideration of the annual rental of $6000.00 payment to be made in installments of $500.00 on the first day of each and every month, beginning with Oct. 1st, 1905, and that the president and secretary be authorized and empowered to arrange the details of said lease with the said Gulf Compress Company, but the same shall not be in conflict with the terms of this resolution. There being no further business before the board, on motion the meeting adjourned.

317

—— ——, *President.*
T. F. STUBBS.

Attest:
W. H. BEATTY, *Sec'y.*

SHAWNEE, OKLA. TER., *April 25th,* 1905.

Mr. F. E. Anderson, Oklahoma City, Okla. Ter.:

You are hereby notified that a meeting of the board of directors of the Shawnee Compress Company, will be held at four (4) o'clock P. M. on the 26th day of April, 1905, at the office of the said corporation, which is the office of W. H. Beatty, its secretary, in the city of Shawnee, in the County of Pottawatomie, Oklahoma Territory, to transact any business that may come before such meeting.

T. F. STUBBS, *President.*

Attest:
W. H. BEATTY, *Sec'y.*

(Handed copy of the notice also of T. F. Stubbs, and W. H. Beatty 4/25/05. Beatty.)

SHAWNEE, OKLAHOMA, *May 1st*, 1905.

Minutes of Meeting of the Board of Directors of the Shawnee Compress Company.

Pursuant to the call of the President dated 26th day of April, 1905, a meeting of the board of directors of the Shawnee Compress Company was held at the office of the Shawnee Compress Company, this 1st day of May, 1905, at 4 o'clock P. M. Present were T. F. Stubbs, president, presiding and W. H. Beatty, Secretary and F. E. Anderson, members of the board of directors. Notice of the said meeting with proof of mailing to the said members of the board, was filed. Minutes of Directors' meeting of April 24th, 1905 and April 26th, 1905, were read and approved by a vote of the majority of the Board, W. H. Beatty and T. F. Stubbs voting aye, and F. E. Anderson voting nay. Said F. E. Anderson filed a written protest.

It was moved by W. H. Beatty and seconded by T. F. Stubbs
318 that the further matters to come before the board, be presented in form of resolutions in writing. Said motion was carried, all the directors voting aye. Upon motion of W. H. Beatty, seconded by T. F. Stubbs, the following resolution was read and adopted; whereas the stockholders at a special meeting duly called, held on the 24th day of April, 1905, by motion selected a committee composed of C. J. Benson, W. H. Beatty, and F. E. Anderson, and directed the said committee to confer with the Gulf Compress Company, and authorized the said committee to enter into a lease with the said Gulf Compress Company, for the lease of the plant and property of the said Shawnee Compress Company for a period of five years, for such monthly rental as they could obtain and that unless a greater sum could be obtained from the Gulf Compress Company, to accept the offer of the said Gulf Compress Company, and lease the same for the term of five years, at the rental of six thousand dollars per year as per the offer and terms then submitted in writing by the said Gulf Compress Company, and whereas the Board of Directors and the officers of the said corporation were directed at such stockholders' meeting to make some suitable arrangement to take up, renew and extend the time of the payment of the indebtedness then outstanding and particularly to take up, and renew and extend the indebtedness due the Shawnee National Bank, aggregating about six thousand Dollars, and at a rate of interest not exceeding eight per cent. per annum, and Whereas, the said committee after negotiating with the said Gulf Compress Company, has been unable to procure a greater rental than the said sum of five hundred dollars per month for five years, and in compliance with the authority and instructions given by such stockholders, has accepted the proposition made by the said Gulf Compress Company to lease the said plant of the said Shawnee Compress Company for a period of five years at an annual rental of six thou-

sand dollars payable in monthly installments of five hun-
319 dred Dollars *Dollars* each, and Whereas said officers have been able to procure the taking up of the said indebtedness

to the Shawnee National Bank as aforesaid, by the Gulf Compress Company at an annual rate of interest of 8% to be secured by a second mortgage upon the said property and plant of the Shawnee Compress Company. Now therefore, we, the Board of Directors of the Shawnee Compress Company, hereby resolve that the action of the said committee in leasing the said plant to the said Gulf Compress Company for the period of five years at the annual rental of $6000.00 payable in monthly installments of $500.00 each, the lease to commence Sept. 1st, 1905, the first payment to be made Oct. 1st, 1905, and the first of each month thereafter, be and the same is ratified, approved and in all respects confirmed, and the president and secretary of the said Shawnee Compress Company are hereby directed to execute a lease of the said plant to the said Gulf Compress Company for the period of five years, at an annual rental of $6000.00, payable monthly in $500.00 installments, as per the form herewith exhibited, or in such other form as the said president and secretary may cause to be executed to carry out the contract hereinbefore in substance stated, and be it further resolved that the said president and secretary be and they are hereby authorized to execute the note of the Shawnee Compress Company to the said Gulf Compress Company, for the principal sum of $6000.00 payable to the order of the said Gulf Compress Company at Memphis, Tenn., twelve months from the date of the same, with interest at the rate of 8% per annum, and to execute in due and lawful form, as security for the payment, of the said note, a second mortgage on all of the property of the said Shawnee Compress Company with such terms and conditions as may be required or demanded by the said Gulf Compress Company, to insure the payment of the said
320 note upon its maturity, and Be it further resolved that the said officers be and they hereby are directed to procure an extension of the indebtedness due the Webb Compress Company.

T. F. STUBBS.
W. H. BEATTY.

The said resolution was adopted; voting in favor of its adoption, W. H. Beatty and T. F. Stubbs, F. E. Anderson present, not voting. There being no further business on motion the meeting adjourned.

T. F. STUBBS, *Pres.*

Attest:
W. H. BEATTY, *Sec'y.*

Minutes of the Stockholders' Annual Meeting, Held by Order of Call at Sec'y's Office on the 6th Day of June, 1905.

The meeting was called to order by V. P., F. E. Anderson, who upon request acted as chairman. The Secretary was appointed committee of one to ascertain stock present or represented and upon call the following reported present: T. F. Stubbs, in person 149 sh'r's. F. E. Anderson, for Anderson, Clayton. 64 sh'r's. W. H. Beatty in person 149 sh'r's. Total of 362 shares constituting

quorum. It was moved by W. H. Beatty seconded by T. F. Stubbs that owing to the absence of several of the stockholders that the meeting stand adjourned to convene Tuesday, June 20th at 11 A. M. at Sec'y's office Shawnee. Carried by unanimous vote.

W. H. BEATTY, *Sec'y.*

I notified in person or in writing, stockholders who were not present at above meeting of date which said meeting stands adjourned.

W. H. BEATTY, *Sec'y.*

321 EXHIBIT 8.

Blakeney & Maxey, Attorney at Law.

SHAWNEE, OKLA., *June* 29, 1905.

Receiver July 1, 1905.
Answered.

Mr. Neil P. Anderson, Fort Worth, Texas.

DEAR SIR: You are hereby notified that C. C. Hanson, holds three hundred shares of the capital stock of the Shawnee Compress Company issued to Beatty & Stubbs pledged to him as security for the payment of a note maturing in June, 1907; that the said Beatty and Stubbs have executed a collateral transfer of the said stock, with irrevocable proxy, authorizing the said Hanson or the members of this firm to vote the said stock during the continuance of this note.

You are further notified that any assignment of the interests of Beatty and Stubbs or either of them must be taken subject to the rights of Mr. Hanson in this matter.

Yours very truly, BLAKENEY & MAXEY,
Attorneys and Agents for C. C. Hanson.

Copy to Beatty and Stubbs, and C. C. Hanson.

322 EXHIBIT 18.

(Offered but not Admitted.)

The Oklahoma National Bank.

Capital, $50,000.

SHAWNEE, OKLA., *May 7th,* 1903.

H. T. Douglas, Esq., City.

DEAR SIR: I am sending you by messenger the minute book of Shawnee Compress Company, I will be unable to attend the annual meeting.

I beg to call the attention of the stockholders to the comparative statements of company for the year 1901 and this year. It has cost

us this year about $3,000.00 or more to compress about the same amount of cotton as was compressed in the year 1900 and 1901, and that in the face of the new and better machinery than then used in 1901.

It looks to me as though we needed a general retrenchment in management. If the thing can't be made to pay out of debt, I would be in favor of throwing it into the hands of a receiver and selling it for what we can get.

Yours very truly, C. J. BENSON.

EXHIBIT 17.

(Offered but not Admitted.)

Office of Webb Compress Company, Limited. Sole Agents for the Webb Steam Lever Compress.

MINDEN, LOUISIANA, *April* 29, 1905.

Mr. W. H. Beatty, Sec't'y Shawnee Compress Company, Shawnee, Oklahoma Territory.

323 DEAR SIR: Yours of the 27th inst., and we do not think it necessary to enter into a regular formal contract, and especially as the one you sent is subject to several objections. We don't want to change the present contract, except that we are willing (should you lease your plant to the Gulf Compress Company for $5,000 or $6,000 a year, for five (5) years) to extend the time of payment of the five notes you owe us, you paying us $1,000 Dec. 10th, 1905; $1,000 Feb'y 10th, 1906; $1,000 May 1st, 1906; and $1,000 every three months thereafter until all of the notes have been paid, all accrued interest on the entire outstanding debt due us to be paid annually on May 15th, beginning with May 15th, 1905.

Trusting this will be entire satisfactory to you and that you may make a good trade with the Gulf Compress Co., I am

Yours very truly, ROB'T D. WEBB, *Sec't'y.*

324 Thereafter, and on the 20th day of September, 1905, the court, after having heard all of said testimony, and the arguments of counsel for both parties plaintiff and defendant, found and decided that said temporary injunction should be dissolved and the petition of said plaintiffs dismissed, at their cost, to which said finding and judgment plaintiffs at the time duly excepted; and thereafter and on the same date, filed in said cause their motion for a new trial, which said motion, together with the endorsements thereon, is in the words and figures following, to wit:

325 TERRITORY OF OKLAHOMA, *Pottawatomie County:*

In the District Court.

#2902.

NEIL P. ANDERSON ET AL., Plaintiffs,
vs.
SHAWNEE COMPRESS COMPANY ET AL., Defendants.

Motion for New Trial.

Come now the plaintiffs in the above entitled action, and move the Court to set aside the findings and judgment this day rendered therein, and to grant plaintiffs a new trial thereof, for the following reasons, which affect materially their substantial rights, to wit:

First. That the findings, decision and judgment of the Court are not supported by sufficient evidence.

Second. That said findings, decision and judgment are contrary to law.

Third. For errors of law occurring at the trial and duly excepted to by these plaintiffs at the time.

SHARTEL, KEATON & WELLS,
Attorneys for Plaintiff-.

Endorsed: No. 2902. Neil P. Anderson *et al. vs.* The Shawnee Compress Co. *et al.* Motion for new trial. Filed Sept. 20th, 1905. B. D. Shear, Clerk, by Will H. Clark, Deputy. Shartel, Keaton & Wells, attorneys for the plaintiff-.

326 Thereafter, and on the said 20th day of September, 1905, the said motion of plaintiffs for a new trial came on for hearing, and the court having heard the arguments of counsel thereon, overruled same, to which said ruling the plaintiffs then and there duly excepted, and the-eupon requested an extension of time within which to prepare and serve a case made for the Supreme Court of Oklahoma, which said request was granted and they were given an extension of time of twenty days within which to prepare and serve such case-made, and defendants were given five days after the service of such case-made within which to suggest amendments, and same was to be signed and settled upon three days' notice by either of said parties to the adverse parties; all of which said findings, judgments, and order overruling motion for a new trial and extending the time within which to prepare and serve a case-made appear more fully from the journal entry of judgment in said cause, which, together with the endorsements thereon, is in the words and figures following, to wit:

327 TERRITORY OF OKLAHOMA, *County of Pottawatomie, ss:*

In the District Court.

NEIL P. ANDERSON ET AL., Plaintiffs,
vs.
SHAWNEE COMPRESS COMPANY ET AL., Defendants.

Journal Entry of Judgment.

Be it remembered, that heretofore, to wit: on the twentieth day of September, 1905, the same being a regular judicial day of the September 1905 term of said Court, the above entitled cause came on regularly for trial, according to previous assignment, upon the issues joined therein by the pleadings of the parties, plaintiff and defendant, said plaintiffs and defendants appearing in person and by their respective officers and attorneys, and said issues being submitted to the Court, and the Court, having heard all the evidence offered, and produced by the said parties and the arguments of counsel for said plaintiffs and defendants, and being fully advised in the premises, finds for the defendants and against the plaintiffs, that the allegations of the petition of plaintiffs are not supported by the law, and the evidence and that the temporary injunction heretofore granted herein, by the Judge, of the Probate Court, of said County, should be vacated and dissolved, and that the prayer of plaintiffs that said injunction be made perpetual, should be denied.

It is therefore by the Court considered, ordered, adjudged, and decreed, that the said temporary injunction so granted herein, be and the same is hereby dissolved, and vacated, and that the prayer of the petition of plaintiffs that said injunction be made perpetual, and that the lease contract executed by the said Shawnee
328 Compress Company to the Gulf Compress Company be cancelled be and the same hereby is denied, and said petition is hereby dismissed, and plaintiffs are hereby adjudged to pay the costs of this action, taxed at $—, to all of which findings, orders and judgment the plaintiffs at the time duly excepted.

Thereafter, and on the same day, plaintiffs filed in said cause their motion for a new trial upon the grounds therein stated, and thereafter, and on said date, said motion came on for hearing, and was by the Court overruled, to which order overruling their said motion for a new trial the plaintiffs then and there duly excepted, and still except, and thereupon, upon application of said plaintiffs, the Court granted an extension of time of twenty days within which to prepare and serve a case-made upon said defendants and the defendants were given five days after the service of said case-made upon them to suggest amendments thereto, same to be settled and signed upon three days' notice by either of said parties to the adverse parties.

B. F. BURWELL, *Judge.*

O. K.
SHARTEL, KEATON & WELLS.
BLAKENEY & MAXEY.

Filed Oct. 20, 1905.

BENJ. F. HEGLER,
Clerk Supreme Court.

Endorsed: No. 2902. In the District Court of Pottawatomie County, Okla. Neil P. Anderson, *et al.*, plaintiffs, *vs.* Shawnee Compress Co. *et al.*, defendants. Journal Entry. Filed in District Court Pottawatomie County, O. T., Oct. 20, 1905. B. D. Shear, Clerk, By C. A. Stauber, Deputy. Shartel, Keaton & Wells, Oklahoma City, Okla., Attorneys for the Plaintiffs.

329 TERRITORY OF OKLAHOMA, *County of Pottawatomie:*

No. 2902.

NEIL P. ANDERSON & Co., Plaintiffs,
vs.
SHAWNEE COMPRESS CO. ET AL., Defendants.

The Foregoing case-made, from pages 1 to —, contains a true and complete statement of all of the pleadings, evidence, findings, orders and final judgment in said above entitled action, and of so much of the other proceedings and matters had and taken therein as are necessary to present the errors complained of by plaintiffs to the Supreme Court.

SHARTEL, KEATON & WELLS,
Attorneys for Plaintiffs.

Filed Oct. 20, 1905.
BENJ. F. HEGLER,
Clerk Supreme Court.

We, the undersigned attorneys for defendants in said action, hereby acknowledge service of the above and foregoing case-made, by the delivery of same to us, this 10th day of October, 1905.

BLAKENEY & MAXEY &
J. H. WOODS,
Attorneys for Defendants.

We, the undersigned attorneys for the defendants, in said above entitled action, do hereby agree that said foregoing case-made is correct, hence waive our right to suggest any amendments thereto, and consent that same may be settled and signed by the Judge of said District Court at any time without further notice to us.

Witness our hands this Oct. 16, 1905.

BLAKENEY & MAXEY,
J. H. WOODS,
Attorneys for Defendants.

Filed Oct. 20, 1905.
BENJ. F. HEGLER,
Clerk Supreme Court.

330 TERRITORY OF OKLAHOMA, *County of Pottawatomie, ss:*

This is to certify that the foregoing case made, and the amendments thereto, have been duly served, in due time, and the amendments thereto duly suggested, and the same duly submitted to me for settlement and signing, as required by law, by the parties to said cause; that the same as above set forth and as corrected by me, is a true, correct, and complete, and contains a true and complete statement of all the pleadings, evidence, findings, orders and judgments in such cause, and of so much of the other proceedings therein as are necessary to present the errors complained of by plaintiffs to the Supreme Court; and I hereby settle, allow, certify, and sign the same as true, correct and complete, and hereby order that the Clerk of the District Court attest the same with the name and seal of said court, and file the same of record, and provided by law.

Witness my hand, at Oklahoma City, O. T. this 18 day of October, 1905.

[SEAL.] B. F. BURWELL,
Trial Judge.

Attest:
B. D. SHEAR, *Clerk,*
By —— ——, *Deputy.*

Filed in District Court of Pottawatomie County, O. T., this 18th day of October, 1905.

B. D. SHEAR, *Clerk.*

Filed Oct. 20, 1905.

BENJ. F. HEGLER,
Clerk Supreme Court.

331 Case-made endorsed as follows: No. 1810. Neil P. Anderson, *et al.*, Pl'ffs in error, *vs.* Shawnee Compress Company, *et al.* Def'ts in error. Filed in District Court of Pottawatomie County, O. T. this 18th day of October, 1905. B. D. Shear, Clerk. Filed Oct. 20, 1905, Benj. F. Hegler, Clerk Supreme Court.

332 And thereafter at the January, 1906, Term of said Supreme Court, on the Eighth day of January, 1906, the following proceeding was had in said cause, to wit:

#1810.

NEIL P. ANDERSON ET AL., Plaintiffs in Error,
vs.
THE SHAWNEE COMPRESS COMPANY, a Corporation, *et al.*, Defendants in Error.

And now leave is granted counsel for plaintiffs in error to file reply briefs herein.

333 And thereafter, on the same day, January Eight, 1906, the following proceeding was had in said cause, to wit:

#1810.

NEIL P. ANDERSON ET AL., Plaintiffs in Error,
vs.
THE SHAWNEE COMPRESS COMPANY, a Corporation, *et al.*, Defendants in Error.

Comes now James R. Keaton, of counsel for plaintiff in error, and makes oral argument herein; And cause is taken on record, briefs and oral argument.

334 And afterward, at the June, 1906, Term of said Supreme Court, on the Fifth day of September, 1906, the following proceeding was had in said cause, to wit:

#1810.

NEIL P. ANDERSON ET AL., Plaintiffs in Error,
vs.
THE SHAWNEE COMPRESS COMPANY, a Corporation, *et al.*, Defendants in Error.

And now this cause comes on for final decision and determination by the Court upon the record, briefs and oral argument submitted therein,

And the Court having duly considered the same, and being fully advised in the premises, finds: That the judgment of the lower court in this cause should be reversed, at the cost of defendants in error, and cause remanded to said lower court, the District Court of Pottawatomie County, in said Territory, with instructions thereto to render judgment in favor of the plaintiffs below in conformity with said Supreme Court opinion and the prayer of said plaintiffs' amended petition,

It is therefore ordered and adjudged by the court, that the judgment of the District Court in this cause be and the same is hereby reversed, at the cost of defendants in error, and this cause remanded to said Pottawatomie County District Court, with instructions thereto to render judgment in favor of the plaintiffs below in conformity with said Supreme Court opinion and the prayer of plaintiffs' amended petition.

Opinion by Pancoast, J. All the Justices concurring except Burwell, J., who tried the cause below, not sitting.

335 Said Opinion of said Supreme Court of the Territory of Oklahoma reads in words and figures as follows, to wit:

336 No. 1810.

In the Supreme Court of the Territory of Oklahoma, June Term, 1906.

Filed September 5, 1906.

NEIL P. ANDERSON, B. L. ANDERSON, and MORRIS E. BURNEY, Co-partners as Neil P. Anderson & Company, and F. E. ANDERSON, M. D. ANDERSON, and W. L. CLAYTON, Co-partners as Anderson, Clayton & Company, Plaintiffs in Error,

vs.

THE SHAWNEE COMPRESS COMPANY, a Corporation; GULF COMPRESS COMPANY, a Corporation; T. F. STUBBS, W. H. BEATTY, J. M. ADELOTTE, and C. C. HANSON, Defendants in Error.

Syllabus.

1. Corporations—Implied Power To Lease, When.—Where a strictly private corporation finds it cannot profitably continue operations, and such financial exigencies exist as render such action necessary or appropriate, it may lawfully make a lease of its entire property for a term of years, although no express authority to lease is contained in the Articles of Incorporation.

2. Same—Unlawful, When.—A corporation, known as the Gulf Compress Company, was organized under Articles of incorporation which stated that it was to conduct a general storage and compress business. Its capital stock, originally $25,000.00, was increased to $1,000,000.00, of which $600,000.00 was in the form of treasury stock. It appeared that the object of the corporation was to gain control of the compress business in the cotton producing area, by means of purchase or lease, exacting from the lessor or vendor in every case a contract that such lessor corporation would not for a term of years engage in a like business "within fifty miles of any compress operated by the" lessee, and that the lessor's members, "individually and collectively" would render every assistance "in discouraging unreasonable and unnecessary competition," *Held,* That such corporation, the Gulf Compress Company, so conducted, is unlawful and against public policy, its operation tending to the unreasonable restraint of trade, the prevention of competition and the establishment of a monopoly.

3. Same—Void Lease.—And where, in such case, a corporation, known as the Shawnee Compress Company, formed for the local compression of cotton, undertakes because of the exigencies of its financial situation, to lease its entire property to said Gulf Compress Company for a period of years, and

in such lease, to agree not to engage in the business of compression of cotton "within fifty miles of any plant operated by the" Gulf Company, and to aid such Gulf Company "in discouraging unreasonable and unnecessary competition," *Held*, That the execution of such lease will be perpetually enjoined, or if executed, the contract, will be declared an unreasonable restraint of trade, and therefore void on the ground of public policy.

Error from the District Court of Pottawatomie County.

B. F. Burwell, Trial Judge.

Reversed and Remanded.

Shartel, Keaton & Wells, for plaintiffs in error.

Blakeney & Maxey, and Woods, Basham & Biggers, for defendants in error.

Statement of the Case.

This action was commenced on May 2, 1905, in the District Court of Pottawatomie County, Oklahoma, by the plaintiffs in error against the defendants in error, the purpose being to enjoin the execution of a certain lease contract by the Shawnee Compress Company, its officers and agents, to the Gulf Compress Company, defendants in error herein. In the absence of the regular district judge from said county, the probate judge thereof issued a restraining order as against the defendants in error Beatty and Stubbs. An amended petition was filed on May 13, 1905, to which a demurrer was presented and overruled. Thereupon defendants below filed an answer, which contained a general denial coupled with certain admissions and explanatory matter. Plaintiffs below demurred to this answer, and on said demurrer being overruled, filed a general denial as reply.

In order that a proper understanding may be had of the issues presented by the pleadings to the court below, so much of the matters set up therein as are essential to a proper consideration of the questions involved in this appeal is given here.

337 From the amended petition it appears that on April 24, 1905, the plaintiffs in error together owned one hundred thirty-nine shares of the capital stock of the Shawnee Compress Company, a corporation organized under the laws of Oklahoma and doing business at Shawnee, Oklahoma, capitalized at $50,000.00, with T. F. Stubbs as president and W. H. Beatty as secretary; and that J. M. Aydelotte was president of said company for several years immediately prior to said date. That the Gulf Compress Company is a corporation existing under the laws of Alabama, having its principal office and place of business in the city of Memphis, Tennessee, with C. C. Hanson and R. E. L. Martin, as president and secretary thereof, respectively. That certain action was attempted to be taken by the stockholders of the Shawnee Compress Company, looking to the leasing of the entire business, good will, property,

franchise, etc., of the said Shawnee Company to the Gulf Company for a period of five years, at a stipulated rental of six thousand dollars per year.

That the number of the board of directors of the said Shawnee Compress Company was attempted to be reduced from nine to three, the latter consisting of Stubbs, Beatty and F. E. Anderson. That on the 26th of April, 1905, said Stubbs and Beatty, assuming to act as a majority of the board — directors of said Shawnee Compress Company, pretended to hold a meeting, and thereat to pass a certain resolution authorizing themselves, as president and secretary, respectively, of such company, to execute the aforementioned lease contract to the Gulf Compress Company, and did on said date, attempt to execute a written lease to the said Gulf Company, on behalf of said Shawnee Compress Company, for the said period of five years at the stipulated rental of six thousand dollars per annum.

That said F. E. Anderson, a minorty stockholder, protested and objected to all such actions of said Beatty and Stubbs. That no exigencies existed requiring the negotiation of such lease, and that the intention of the Gulf Compress Company, in procuring said lease, was to secure a monopoly of the compress business, and to restrict competition between the compresses already operated by said company and the compress previously owned and operated by the Shawnee Compress Company, and is therefore void, as being contrary to public policy, and in undue restraint of trade.

Other allegations are made, attacking the legality of the proceedings of the board of directors in and about the execution of the alleged lease contract, and such acts are characterized as *ultra vires,* and void, as against the rights of plaintiff in error, minority stockholders of the said Shawnee Compress Company. The prayer was that the contract be declared void, and that said Stubbs and Beatty be enjoined from assuming to act as president and secretary respectively of said company, and that said company or its officers take no further proceedings looking to the execution of the said lease.

Following a general denial, the matters alleged in the answer essential to the questions here are, first, as to the legality of the proceedings of the stockholders, and second, that the execution of said lease was rendered necessary and right by the exigencies of the financial situation of said Shawnee Compress Company.

To this answer, plaintiffs below filed a demurrer, which was overruled. They then filed a general denial by way of reply. The action was tried to the court, and resulted, on September 20, 1905, in judgment for defendants below, dissolving the temporary injunction, dismissing plaintiffs' amended petition, and taxing the costs of said action to plaintiffs. Motion for new trial was filed and overruled, and this proceeding in error was thereupon commenced, to review the action of the court below.

The lease, the execution of which is sought to be enjoined, denominated the Shawnee Compress Company as the "Landlord," and the Gulf Compress Company as the "Tenant." After making provision for the leasing of all the personalty belonging to said Shawnee Company, specifying the period to be five years, the rental

six thousand dollars per annum, and covering various other items, such as repairs, damage by fire, flood, etc., providing for the itemizing of the leased property, etc., the contract contains the following language:

338 "6. The Landlord shall not, during the term of this lease, without the consent of the Tenant, directly or indirectly engage in the compression of cotton within fifty miles of any plant operated by the Tenant.

"10. The Landlord agrees and pledges the Tenant its good will, moral and real support, and that it, individually and collectively, will render the Tenant every assistance in discouraging unreasonable and unnecessary competition. * * *" The Tenant further agrees to in no way use its other compresses to the detriment of the Shawnee Compress during the term of this lease."

It further appears from the evidence at the trial that C. C. Hanson is the president of both the Atlanta Compress Company and the Gulf Compress Company, being a stockholder in each, and is the one who negotiated the lease in question. That the Atlanta Compress Company operates in the states of Alabama, Georgia and Florida, and was organized and is owned and controlled solely by the carriers for their benefit. That the board of directors and stockholders of said corporation are composed entirely of railroad officials. That the Atlanta Company controls the operation of twenty-five plants. That the Gulf Compress Company is a close corporation, chartered in Mobile, Alabama, and operating in the states of Alabama, Mississippi, Tennessee, Louisiana, Arkansas, Indian Territory and Oklahoma, and controlling the operation of twenty-seven compresses in those states, located at various points therein. That none of the Gulf Company's plants and the Atlanta Company's compresses are operated at the same points.

It is further disclosed by the evidence that the capital stock of the Gulf Company, as originally incorporated, was $25,000.00, but that it has, within the past year, been increased to one million dollars, of which $600,000.00 is treasury stock. That its field of operation has been rapidly extended from Alabama to all the cotton growing territory; that it is at the present time engaged in the purchase or leasing of compresses at various points, and as testified to by its president, is "prepared to buy or lease, whichever proposition suits us best." It appears from the evidence that negotiations conducted by Mr. Hanson with Stubbs and Beatty for the lease of the Shawnee plant in pursuance of an effort to avoid, "directly or indirectly, the possibility, if not probability, of unnecessary and unreasonable competition."

It is further disclosed by the testimony that the carrier pays for the compression of cotton, incorporating the cost thereof in its tariff. That tariffs for the hauling of cotton are established by the railroads as well as hauling districts or territories, within which the haul of cotton must be one way, or otherwise the higher rate, denominated the terminal rate, applies, rendering it unprofitable to ship to other than the established point in the hauling district.

Other facts material to the propositions urged by counsel, disclosed

by the evidence and other proceedings, will be stated in connection with the argument on the propositions they concern.

Opinion of the Court by

PANCOAST, *J.*:

The first error assigned is that the court below erred in not deciding that it was beyond the scope of the legal powers of the said Shawnee Compress Company to execute the lease contract in question. We find no express authority to lease set out in the Articles of Incorporation, but we are nevertheless of the opinion the weight of authority is that when a strictly private corporation finds it cannot profitably continue operations, it may lawfully make a lease of its entire property for a term of years.

Plant *v.* Macon Oil Co., 30 S. E., 567; Morisette *v.* Howard, 62 Kans., 413, 63 Pac., 756; 10 Cyc., 1138; Phillip *v.* Aurora Lodge No. 104, 87 Ind., 505; Nye *v.* Storer, 168 Mass., 53; Ardesco Oil Co. *v.* North Am. Oil Co., 66 Pa. St., 375.

It is, however, only when such exigencies exist as necessitate or render appropriate such or similar action that this right can be exercised. The question, therefore, of the power of a private corporation to lease its entire property for a term of years, resolves itself to consideration of the financial exigencies of the company concerned, as indicated by the evidence; and while no special finding of fact is made in that regard in the case at bar by the trial court, yet
339 this feature must necessarily have been considered, in the light of the evidence introduced at the trial, and the judgment based thereon. We find ample authority in the record for the action of the court below in this respect, and following the rule so often reiterated that it is unnecessary to cite authorities to sustain it, we must hold that where the record contains some evidence to support the finding of the trial court, the judgment will not be disturbed in this court on appeal.

The second proposition contended for, however, involves the consideration of another and far more important question, which it becomes the imperative duty of this court to pass upon. Does the contract, or so much thereof as is set out above, tend to the unlawful restriction of competition in the business it concerns, and thereby furnish an illegal monopoly of said buziness in the cotton growing communities, and this, in contemplation of the character of the transactions out of which the contract grew, the plan and mode of operation of the business of the purchasing or leasing company, and the objects or results accomplished, if not in fact intended or sought to be brought about?

When a contract is brought before us for construction and adjudication, its validity is necessarily involved, and is usually the first point to which the attention of the court is challenged by counsel. In construing the instrument here, as well said by Mr. Justice Bradley, in Oregon Steam Navigation Company *v.* Windsor, 20 Wall., 64-68, it must be "judged according to the circumstances, and can only be rightly judged when the reasons and grounds of the rule

of construction of such contracts are carefully considered." The public welfare is the first consideration to which the courts will look, and then the question of whether the restraint upon the one party is or is not greater than the protection of the other requires. It is now the general holding that when one engaged in any business or occupation sells out his stock in trade and good will, he may make a valid contract with the purchaser binding himself not to engage in the same business in the same place for a time named, and this is about as far as contracts in restraint of trade have been upheld by the court- in this country or in England. But when, by the principal operation of any contract, it encroached upon the rights of the public and transgresses the liberty of free competition, consideration then for the public welfare and for society becomes paramount, and must predominate over any individual right to contract. It is immaterial in determining the legality of such contracts whether or not it was entered into with any evil intent, but the material consideration is its injurious tendency, and the power thereby given to control prices. Nor, in order to vitiate a contract, is it essential that its result should be a complete monopoly; it is sufficient if it really tends to that end, and to deprive the public of the advantages derived from free competition.

No one can read the contract in the case at bar, and fail to discover that considerations of public policy are largely involved. The intention of the agreement is to aid in securing the objects sought to be attained in the formation and organization of the Gulf Compress Company and its allied corporation, the Atlanta Compress Company; and that this object is to prevent competition in the compression of cotton throughout the cotton producing states cannot reasonably be doubted. Circumstances so strong that it is impossible not to give this interpretation to them point unerringly to this conclusion. It crops out time and again both in the language used during the negotiations for the lease of the Shawnee Compress Company's plant and in the contract itself, and in the testimony introduced on the trial below. True, the language is guarded, the parties are circumspect; it is only sought to "discourage unnecessary and unreasonable competition," but such language is to be taken and construed in the light of the actions of the parties, and in view of the attendant circumstances. The Gulf Compress Company is in the business of compressing cotton for hire. Its field of operation is as broad as language can make it. Its capital is one million dollars, of which six tenths or six hundred thousand dollars remains in the treasury in the shape of treasury stock, the form most convenient, most immediately available for instant application. Its capital has within the past eighteen months been increased from $25,000.00 to an amount sufficient to buy or otherwise absorb almost all, if
340 not the entire business of cotton compression conducted in the United States. It, with the Atlanta Company now control the operation of fifty-two compresses, out of which it owns but six, holding the remainder by lease contracts, as testified to by the president of both companies, similar to that under consideration here. The officers of neither of these companies have seen fit to

declare a single dividend since their incorporation, but the surplus earnings of both companies are held in the corporation vaults, for the very purpose, as we may well infer from the surrounding circumstances, of increasing its holdings of such properties under like contracts, in furtherance of a general policy to absorb the entire business of compression of this commodity. The real, the veritable purpose actuating the officers of the Gulf Compress Company, as disclosed by its plan of organization and mode of operation, and as manifested by the circumstances surrounding the conduct of its business and the results of its management by them, is, beyond reasonable question, to place within their power the control of the compress industry, by purchasing or leasing those plants which are advantageously located in each of the hauling districts or territories established by the carriers in their cotton tariffs. Within certain boundaries, the haul must be one certain way, and when the Gulf Company seizes the strategic point, under its leases, competition within that district is annihilated. If it be true, as declared upon the witness stand by its president, that such is not the purpose of this organization, then the intention of its officers, as evinced in the declarations which fall from their lips, is at wide variance from the purposes evidenced by the results they have brought about. Nowhere by the terms of the contract we are construing is the Gulf Compress Company obligated to continue the Shawnee plant in operation as an active factor in the cotton compress business. Its machinery might lie idle, its industry cease, for all the contract obligates them to the contrary. The territory within which the restriction on the Shawnee Company is to operate is practically unlimited. True, the agreement is that it "shall not directly or indirectly engage in the compression of cotton within fifty miles of any plant operated by the Tenant," but, under this clause, the Gulf Company may establish a compress at any competitive point it pleases, and thereby wholly extinguish competition through those companies bound by its leases; and if with a few, why not with all until the logical outcome is the establishment of a monopoly of that business throughout the cotton producing area, the closing of every avenue to competition, under leases identical with that under consideration here.

The cases cited by counsel for the defendants in error do not sustain the doctrine contended for by them. This case does not fall within that class of cases where contracts have been upheld, though the parties, by the contract, were restrained from carrying on the same business for a particular length of time and within a designated territory, but is one of that class which depend for their validity upon the situation of the parties, the nature of the business, the interests touched by the restrictions, and the effect of contract upon the rights and welfare of the public. Tested by the general principles applicable to contracts of this character, this agreement is far more extensive in its outlook and more onerous in its intent than is necessary to afford a fair protection to the lessee. And tested by the same principles, because of the considerations hereinbefore mentioned, it is equally clear that the obligation is in general restraint of trade, opposed to public policy, and pursued to its logical outcome,

tends necessarily to the establishment of a monopoly, and is therefore, to that extent, void.

We have examined numerous decisions in the investigation of this subject, and believe that the conclusion we have reached is the one most closely following the trend of modern authority, and in entire accord with the latest judicial expressions and enunciations of the principles governing such contracts. In our judgment, not only is the enterprise in which the Gulf Compress Company is engaged an unlawful one, as now conducted, but the contract in question in this case, being made to further its objects and purposes, is void on the ground that it is in unreasonable restraint of trade and against public policy.

341 Some of the cases which construe contracts of similar character are:—

Field Cordage Co. *v.* Nat'l Cordage Co., 6 Ohio Cir. Ct. 615; Richardson *v.* Buhl, *et al.*, 43 N. W., 1102; Rakestraw *v.* Lanier, 30 S. E., 735; Lawrence *v.* Kidder, 10 Barb., (N. Y.) 641; Althen *v.* Vreeland, 36 Atl., 479; Consumers Oil Co. *v.* Nunnemaker, 142 Ind., 560; 41 N. E. 1048; Bingham *v.* Maigne, 52 N. Y. Super. Ct., 90; Thomas *v.* Adm'r of Wm. Miles, Dec'd, 3 Ohio St., 275; Western Wooden Ware Ass'n *v.* Starkey, *et al.*, 47 N. W., 604; Small *v.* Minn. Electro Matrix Co., *et al.*, 47 N. W., 797; Dodge Stationery Co. *v.* Dodge, 78 Pac., 879; Roberts *v.* Lemont, 102 N. W., 770; Evans *v.* Am. Strawboard Co., 114 Ill. App., 450; Texas Standard Cotton Oil Co., *v.* Adous, 19 S. W., 274, and many others.

In the case of Field Cordage Co. *v.* Nat'l Cordage Co., *supra*, a lease for a term of years was made by a manufacturing company of the machinery in the mill of another like company, together with the latter's good will, but the lease failed to make provision for the operation of the mill where situated, and such lease was held void as in restraint of trade.

The case of Richardson *v.* Buhl, *et al.*, above cited, involved the consideration of a contract for the purchase of the entire property of a manufacturer of matches, it being the policy of the purchasing company to exact from every seller a bond that such manufacturer would not for a term of years engage in or aid anyone else in the manufacture of matches, "in any place where such action might conflict with the interests or diminish the sales, or lessen the profits of the purchasing corporation," and in an exhaustive opinion, Sherwood, C. J., held that such contract was "unlawful and against public policy, the object being to prevent competition and control the price of an article of necessity."

The contract construed in the case of Thomas *v.* Adm'r of Wm. Miles, *supra*, was similar in its provisions to the one at bar, the seller binding himself "not to enter into nor be concerned in the kind of business which has heretofore been conducted or carried on by the said firm, or any branch thereof, within the city of Cincinnati and shall not in any way interfere with any agency established by said firm, whether such agencies shall be located in Cincinnati or elsewhere," and upon appeal such contract was held to be "clearly opposed to public policy and therefore void."

Again in the case of Dodge Stationery Co. *v.* Dodge, *supra,* under a statute almost identical with ours, excepting from the general operation of the law as to contracts in restraint of trade those concerning the selling of good will of the business, it was held that a contract by a vendor of stock in a corporation, binding him not to engage in the line of business conducted by the corporation, is void. And that occurs in the case at bar, since by the terms of the contract, the Shawnee Compress Company, and its officers "individually and collectively," bound themselves not to engage in the compress business in a territory practically unlimited.

See also Santa Clara Val. M. & L. Co. *v.* Hayes, 76 Cal., 387; Pacific Factor Co. *v.* Adler, 95 Cal., 110; Craft *v.* McConoughy, 79 Ill., 346; Clancy *v.* Onondaga Fine Salt Co., 62 Barb. (N. Y.) 395; Arnot *v.* Pittson etc. Coal Co., 68 N. Y. 558; Central Ohio Salt Co. *v.* Guthin, 35 Ohio St., 666; Shute *v.* Heath, 42 S. E., 704; Slaughter *v.* Coal, etc., Co., 47 S. E., 247; 104 Am. St. Rep., 1013.

In view of the evidence in the record before us, we cannot judicially determine that any portion of the lease contract involved in the case at bar would unquestionably have been entered into, regardless of the two provisions hereinbefore quoted, and herein held unlawful; hence, the entire contract must fall. Western Wooden Ware Ass'n *v.* Starkey, *et al.,* 47 N. W., 604; Bishop *v.* Palmer, 16 N. E., 299; Wilson's Annotated Statutes, Sec. 767.

In view, then, of the evident purposes of the leasing company, as indicated by its plan of organization, its abundant available treasury stock, its control, together with the Atlanta Company, of fifty-two compresses scattered at various points over the Southern states, the area affected, the unlimited operation of the re-
342 straining clause, the general situation and the interests concerned, considerations of public welfare and regard for the public interests in the communities effected, require us to hold that this lease is wider in scope and more restrictive in operation than necessary for the proper protection of the Gulf Compress Company in its lease, and being executed in furtherance of a monopolistic design inimical to the best interests of the public is in unreasonable restraint of trade, and therefore void.

In view of the conclusion we have reached upon the second assignment of error discussion of the remaining questions urged would serve no good purpose.

For the reasons above given, the judgment of the trial court is reversed, and this cause is hereby remanded to the District Court of Pottawatomie County, with instructions for that court to render judgment in favor of the Plaintiffs below in conformity with this opinion, and the prayer of their amended petition.

Burwell, J., who tried the case below, not sitting; all other Justices concurring.

343 In the Supreme Court of the Territory of Oklahoma.

UNITED STATES OF AMERICA, *Territory of Oklahoma, ss:*

Certificate.

I, Benj. F. Hegler, Clerk of the Supreme Court of the Territory of Oklahoma, do hereby certify that the foregoing 342 pages, numbered from 1 to 342, inclusive, are a full, true and complete transcript of the record and all proceedings in said Supreme Court in the case of Neil P. Anderson *et al.*, Plaintiffs in error, *vs.* The Shawnee Compress Company, a corporation, *et al.*, Defendants in error, as the same remain upon the files and records of said Supreme Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Guthrie, this 13 day of October, A. D. 1906.

[Seal Supreme Court, Territory of Oklahoma.]

BENJ. F. HEGLER,
Clerk of the Supreme Court of the Territory of Oklahoma.

Endorsed on cover: File No. 20,434. Oklahoma Territory supreme court. Term No. 140. The Shawnee Compress Company, The Gulf Compress Company, T. F. Stubbs *et al.*, appellants, *vs.* Neil P. Anderson, B. L. Anderson and Morris E. Burney, co-partners as Neil P. Anderson & Company, and F. E. Anderson, M. D. Anderson and W. L. Clayton, co-partners as Anderson, Clayton & Company. Filed October 24th, 1906. File No. 20,434.

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JAMES H. McKENNEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1907. No. 140.

SHAWNEE COMPRESS COMPANY, GULF COMPRESS COMPANY, T. F. STUBBS, ET ALS.,
Appellants,

vs.

NEIL P. ANDERSON, B. L. ANDERSON AND MORRIS E. BURNEY, CO-PARTNERS AS NEIL P. ANDERSON & COMPANY, F. E. ANDERSON, M. D. ANDERSON AND W. L. CLAYTON, CO-PARTNERS AS ANDERSON, CLAYTON & CO.,
Appellees.

No. 20434

BRIEF OF APPELLANTS.

G. T. FITZHUGH,
B. B. BLAKENEY,
Attorneys for Appellants.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1907. No. 140.

SHAWNEE COMPRESS COMPANY, GULF COMPRESS COMPANY, T. F. STUBBS, ET ALS.,
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vs.

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Appellees.

No. 20434

BRIEF OF APPELLANTS.

This action was commenced by the appellees herein on the second day of May, 1905, in the District Court of Pottawatomie County, Oklahoma Territory, in which court the said appellees filed their petition against the Shawnee Compress Company and the Gulf Compress Company, both corporations, to enjoin the said compress companies and their officers from executing a certain contract of lease, by the terms of which said lease the

Shawnee Compress Company let and demised its compress plant in the City of Shawnee, Territory of Oklahoma, to the Gulf Compress Company for a period of five years, beginning the first day of September, 1905, and terminating on the 31st day of August, 1910, for the annual rental of six thousand dollars, payable in monthly installments of five hundred dollars each, during the period of the said lease. The said petition will be found on page 10 of the printed record, and a copy of the said lease is attached to such petition, marked Exhibit "F" for identification, and is found on page 18 of the printed record.

Subsequently, and on May 13th, 1905, the appellees filed an amended petition, which is found on page 26 of the printed record. The said petition and its amendment having been duly challenged by motions and demurrer, which being in substance overruled by the trial court, the appellants, as defendants in the said court filed their answer, which is incorporated in the printed record at pages 34 to 40, inclusive, and subsequently, to-wit, on the 27th of May, 1905, the said appellees having challenged the sufficiency of the said answer by demurrer, which said demurrer was overruled by the court, the plaintiffs filed their reply, which said reply is incorporated in the printed record at page 42, and thereafter, on the 16th day of September, 1905, plaintiffs in the trial court, appellees herein, with leave of court filed an amendment to their amended petition; which said amendment is incorporated in the printed record at pages 43 and 44.

This is a controversy between the minority stock-

holders and the corporation, its officers, directors and majority stockholders.

The issues presented by the said petition and its amendments, the answer and reply, are briefly as follows: Appellees herein, in their petition in the trial court, alleged that the Shawnee Compress Company was a corporation duly organized under and by virtue of the laws of the Territory of Oklahoma, with power to build, own and operate a compress at the City of Shawnee, and that the said appellees, plaintiffs in the court below, were stockholders in such corporation, and that T. F. Stubbs and W. H. Beatty, two of the appellants herein, defendants in the court below, were stockholders in such corporation and the owners and holders of a majority of such stock, and that said Stubbs was president of the said corporation, and Beatty was secretary, and both were members of the board of directors; that J. M. Aydelotte, prior to the 24th day of April, 1905, had been and acted as the president of the said corporation, the Shawnee Compress Company; that the Gulf Compress Company was a corporation organized under the laws of the State of Alabama, and as such was authorized to own, construct and operate compresses, and that C. C. Hanson was its president, and R. E. L. Martin was its secretary; that on the 26th day of April, 1905, the said T. F. Stubbs and W. H. Beatty, as president and secretary, respectively, of the Shawnee Compress Company, assumed to execute a certain written lease to the said Gulf Compress Company on behalf of the Shawnee Compress Company, and that on the first day of May, 1905,

a meeting of the pretended board of directors of the Shawnee Compress Company was held in the City of Shawnee, which said meeting was attended by T. F. Stubbs, F. E. Anderson and W. H. Beatty, and at the said meeting the minutes of the previous meeting were approved, over the written protest of the said F. E. Anderson; the appellees, plaintiffs in the court below, contended that the charter issued by the Territory of Oklahoma to the Shawnee Compress Company required the election of five directors, and that the action of the stockholders of the said Shawnee Compress Company in electing but three directors, rendered such election invalid and void, and that the said T. F. Stubbs and W. H. Beatty were not directors of the said corporation, and in such petition the said appellees, being plaintiffs below, alleged that all of the actions of the said board of directors, in the execution of the said lease, and in all other matters in connection therewith, were irregular, invalid and void and not binding upon the said corporation; appellees in said petition also contended that under the powers conferred upon the Shawnee Compress Company by its charter, that the Shawnee Compress Company had no authority to enter into a lease letting and demising all of its properties for the full period of five years to the Gulf Compress Company, and that such action and such pretended lease was in excess of its chartered powers, was *ultra vires* and void. Appellees in their amended petition and in their amendment to their amended petition allege that the said Gulf Compress Company, one of the appellants

herein, being a corporation organized under the laws of some other state or territory than the Territory of Oklahoma, had been for some years last past engaged in the business of leasing and operating competing presses for the purpose of monopolizing, so far as possible, the business of compressing cotton in a large portion, if not all, of the territory embraced in the cotton raising districts of the United States, and that the said pretended lease which the said Beatty and Stubbs attempted to negotiate to the said Gulf Compress Company, was procured on the part of certain of the officers of the said company in furtherance of their scheme to further monopolize the compress business and restrict competition in the same, and that the said Gulf Compress Company had theretofore leased the compresses at Oklahoma City, Oklahoma Territory, and at South McAlester and Muskogee, Indian Territory, and that the said Gulf Compress Company was, in its operation and method of conducting business, a trust and combination in restraint of trade and commerce, and had procured said pretended lease contract with the said Shawnee Compress Company for the purpose of furthering its said fraudulent combination and conspiracy in restraint of trade, in violation of the federal anti-trust law and the anti-trust laws of the Territory of Oklahoma, and that it was the purpose and design of the officers of the said Gulf Compress Company to increase the charges for compressing cotton in a sum aggregating about ten cents a bale, and by so doing it would entail a loss upon the purchasers of said cotton equal to said extra charges.

To this petition and its amendments the appellants herein filed their answer, denying generally the allegations thereof, but admitting the incorporation of the Shawnee Compress Company and the Gulf Compress Company, and admitted that T. F. Stubbs and W. H. Beatty were respectively president and secretary of the Shawnee Compress Company, and stated specifically the amount of stock held by each of the stockholders of the Shawnee Compress Company, but alleged that the appellants, Neil P. Anderson & Company, and Anderson, Clayton & Company had participated in the stockholders' meeting of the Shawnee Compress Company by their duly authorized agents and partners, respectively, B. L. Anderson for Neil P. Anderson & Company, and F. E. Anderson for Anderson, Clayton & Company; the said appellants admitted in their answer the execution of the said lease contract and alleged in connection therewith that the said Shawnee Compress Company was largely indebted, in a sum exceeding seventeen thousand dollars and was wholly unable to meet the same, and that the said indebtedness was pressing; that $6,000.00 of the same was owing to the Shawnee National Bank, and the same was matured, and the officers of the Shawnee Compress Company had endeavored to procure an extension of the time of payment of the said indebtedness with the said bank, but the said bank had declined to extend the same and was threatening to enforce payment of the said indebtedness; that $11,500.00 of such indebtedness was due the Webb Press Company, Limited, and was secured by a first mortgage upon the properties of the

company, and was long past due; and the said Webb Press Company, Limited, was threatening to enforce payment of such indebtedness; that the said Shawnee Compress Company in order to obtain moneys with which to pay the said indebtedness, was compelled to execute the said lease to the Gulf Compress Company, a part of the consideration of the said lease being an agreement to loan to the said Shawnee Compress Company a sufficient amount to take up said indebtedness due the Shawnee National Bank, and to provide for the indebtedness due to the Webb Press Company, Limited, and that it had executed the said lease for such purposes and none other, and that the said Shawnee Compress Company could not procure the money to meet its matured obligations in any other manner, and except for said contract of lease the properties of the said Shawnee Compress Company would have been sold at great sacrifice. The said appellants further alleged that the appellees, Neil P. Anderson & Company and Anderson, Clayton & Company, were cotton buyers operating within the said Territory of Oklahoma, and that the said firms were engaged in the buying and shipment of cotton in different portions of the said territory, and in order that they might have an unfair advantage over other persons engaged in said business, had conspired for the purpose of forming a monopoly of all of the compresses in the said territory under their management and control, and in order to hamper and harass such other cotton buyers, and to prevent them from having their cotton compressed and shipped

with the rapidity that the said Andersons could do so, by reason of their control and management of the said compression, and in order to obtain other unfair advantages over their competitors, that the said Andersons had purchased stock in the compresses located at Chickasha and Pauls Valley in the Indian Territory, and at Snyder, Hobart, El Reno and Shawnee in Oklahoma Territory, and that the said Andersons had endeavored to obtain a majority of the stock of the Shawnee Compress Company, and knowing that Beatty and Stubbs were involved and in great need of monies, had in all ways attempted to oppress said Beatty and Stubbs and compel them to sell their said stock to the said appellees without any sufficient or adequate consideration, and had conspired together to compel the said Shawnee Compress Company, which they knew was pressed, as aforesaid, by matured indebtedness, to sell and convey its property to them, at a wholly inadequate consideration, to-wit, the sum of twenty-five thousand dollars; and that to prevent the said sacrificial sale of the properties of the said Shawnee Compress Company, that the said lease had been executed, and that its execution had been coerced by the wrongful acts of the said Andersons, who were at all of the said times members of the said board of directors of the said Shawnee Compress Company, and whose duty it was to assist the said Shawnee Compress Company to tide over its financial embarrassments, and that the said Andersons had commenced this suit for the purpose of declaring the said lease invalid, and thereby compelling the said Shawnee Compress Company to sell its

properties to pay its debts, or submit to a forced sale by its creditors, in order that the said Andersons might purchase and obtain the same; and therefore, by reason of the said wrongful acts of the said Andersons, who being plaintiffs in the court below, appellees herein, a court of equity would not assist or further their unlawful designs, and their hands being unclean, they should be denied any relief in said action, and denied generally that the said contract of lease directly or indirectly or unreasonably restrained trade or tended to unreasonably restrain trade, or to prevent competition, or to the establishment of a monopoly, and denied that the same was against public policy and void.

From these pleadings and the evidence offered in the case five issues were formed:

1st. Was the contract of lease such an abandonment of the corporate franchises by the Shawnee Compress Company as to be *ultra vires*?

2nd. Was the said leasing rendered necessary, and therefore valid, by the financial embarrassments of the Shawnee Compress Company?

3rd. Was the said contract of lease, by its terms or the circumstances surrounding its execution, of such nature as to tend unreasonably to restrain trade, prevent competition or to create a monopoly?

4th. Was the said contract entered into in such manner and by such officers of the Shawnee Compress Company as to bind the said corporation?

5th. Were the plaintiffs below in equity with clean hands?

The trial court found all the issues in favor of the defendants in that court, appellants herein, and on appeal to the Supreme Court of the Territory, the Supreme Court of the Territory found the first and second issues in favor of the appellants herein, declined to pass upon the fourth and fifth issues; and found the issue herein classified as No. 3 in favor of the appellees, and on this issue the Supreme Court of the Territory reversed the judgment rendered in the District Court of Pottawatomie County, Oklahoma Territory, and directed the said court to render judgment in favor of the plaintiffs below, appellees herein. From that decision an appeal is taken to this court by the defendants in the court below.

ARGUMENT.

The nine assignments of error may be presented under three sub-divisions:

1st. That the Supreme Court of the Territory erred in holding that the contract of lease from the Shawnee Compress Company to the Gulf Compress Company, of date of the 26th day of April, 1905, and found in the printed record on pages 18 to 21, inclusive, tended to create a combination unreasonably in restraint of trade, the prevention of competition and the establishment of a monopoly, therefore, being against public policy and void.

2nd. The Supreme Court of the Territory erred in refusing to deny to the appellees, plaintiffs in the courts below, the relief by them sought in said action, because they had come into equity with unclean hands.

3rd. The Supreme Court of the Territory erred in not awarding a new trial of the said cause, instead of reversing the said cause and entering an order directing the trial court to enter judgment for the plaintiffs.

There were numerous other questions presented in the Supreme Court of the Territory of Oklahoma, which will, without doubt, be re-urged in this court, and which we will anticipate and after discussing our assignments of errors will cite the authorities supporting our contention upon these anticipated questions.

FIRST—PUBLIC POLICY.

The Supreme Court of Oklahoma by Justice Pancoast, page 219 of the printed record, say:

"The second proposition contended for, however, involves the consideration of another and far more important question, which it becomes the imperative duty of this court to pass upon. Does the contract, or so much thereof, as is set out above, tend to the unlawful restriction of competition in the business which it concerns, and thereby furnish an illegal monopoly of the said business in the cotton growing communities, and this, in contemplation of the character of the transactions out of which the contract grew, the plan and mode of operation of the business of the leasing or purchasing company, and the objects or results accomplished, in fact intended or sought to be brought about?"

At page 223 of the said printed record the same Justice, speaking for the Supreme Court of Oklahoma, says:

"In view then, of the evident purposes of the leasing company, as indicated by its plan of organization, its abundant available treasury stock, its control, together with the Atlantic Company of fifty-two compresses scattered at different points over the southern states, the area affected, the unlimited operation of the restraining clause, the general situation and the interests concerned, considerations of public welfare and regard for the public interests in the community affected, require us to hold that this lease is wider in scope and more restrictive in operation than necessary for the proper protection of the Gulf Compress Company in its lease, and being executed in furtherance of a monopolistic design, inimical to the best interests of the public, is in unreasonable restraint of trade and therefore void."

The Supreme Court of the Territory regarded that the Gulf Compress Company possessed a monopolistic design inimical to the best interests of the public because its field of operations embraced the cotton growing states and it was capitalized at one million dollars, of which six-tenths, or six hundred thousand dollars remained in the treasury in the shape of treasury stock, the form most convenient and most conveniently available for instant application; and that it, with another and distinct corporation, the Atlantic Compress Company, controlled the operation of fifty-two compresses, out of which it, the Atlantic Compress Company, owned but six, holding the remainder by lease contracts, and that the officers of

neither of these companies had declared a dividend since their incorporation.

The Supreme Court of Oklahoma overlooked the nature and purpose of the organization of the Atlantic Compress Company. It was not organized to engage in compressing cotton for profit. The transportation companies issue bills of lading and collect transportation charges upon cotton in the uncompressed condition, but the carrier reserves the right of compression at its expense in transit. On page 75 of the printed record, in the last answer, Mr. Hanson, president of the Gulf Compress Company, explains the method of compression of cotton. The railroads charge what it called a flat rate for the transportation of cotton, and to diminish the number of cars required for such service, increase the density of the bales by compressing in transit, so that one car can do the service of three in transporting the cotton to market. The shipper is not concerned as to whether cotton is compressed or not. The shipper pays no part of the cost of compression and receives no benefit from its compression. The railroads east of the Mississippi river, desiring to do their compressing at a minimum cost, organized the Atlantic Compress Company. Its stockholders are exclusively railroad companies, and it cannot earn profits and does not declare dividends because it receives no pay for its compression. The Atlantic Company at the close of the season estimates the total cost of operating its many plants and apportions such expenses to the several

railroad companies, proportioned to the number of bales each company has had compressed (See printed record, pages 75 and 76).

The Atlantic Company is unconcerned about competition. Its stockholders compress their own cotton to reduce the bulk of the packages which they are transporting.

At the commencement of this action and at the trial of the same the Gulf Compress Company had leased three plants in Oklahoma and Indian Territory; one at Oklahoma City, one at Muskogee, and the one in controversy at Shawnee. The territorial Supreme Court condemn these three leases made by the Gulf Compress Company because of its alliance and similarity to the Atlantic Compress Company, and because the two companies had leased or purchased fifty-two compresses and did not earn profits or declare dividends. There is no support in the record of any alliance between the two compress companies and there is no similarity in the purpose of the corporations. One is organized by private parties for compressing cotton for profit, and the other for compressing for its stockholders, the carriers.

The only three independent acts of which the Gulf Compress Company is guilty, tending to unreasonably restrict trade, urged by the territorial Supreme Court, are:

a. That it has treasury stock unissued.

b. It has entered into a contract with the Shawnee Compress Company by which the Shawnee Compress Company agrees not to engage in business during the

life of the lease within fifty miles of the leased plant, and,

c. That the terms of the contract of lease do not obligate the Gulf Compress Company to operate the plant at Shawnee.

a.

The paid up capital of the Gulf Compress Company is $400,000.00, and its surplus for two years was only $20,000.00 (printed record page 83). Yet, because this company is authorized under its charter to issue more stock and because it has this small surplus, the territorial Supreme Court conclusively presumes that its object is to establish a monopoly. And because its president happens to be the president of another company the two are treated in effect as one and the same, although the record shows not a single stockholder in the Gulf Compress Company owns stock in the Atlantic Company, and the directors and the officers, with the exception of Mr. Hanson, and the methods of doing business are entirely different.

There certainly can be no force in the proposition that un-issued treasury stock imports an unlawful purpose in the organization of a corporation or impresses with illegality the plan and policy of its business. Believing that the custom of corporations to organize with only portion of the capital stock paid in, and the remainder reserved as treasury stock for future disposition, has become so general and has existed for such considerable length of time without having been regarded with sus-

picion, we shall submit this objection urged by the Supreme Court of the Territory of Oklahoma without further discussion.

b.

The cardinal error of the Supreme Court of Oklahoma is in holding that because the purchasing or leasing of the compress might thereby prevent that compress from entering into competition with the vendee or lessee is from its nature invalid because in restraint of trade. An act is not necessarily invalid because in restraint of trade, when the restriction of trade is an ancillary or incidental result. To be condemned by the law a contract must be an agreement between the parties to restrict trade, and such contract is invalid whatever may be the result of its operation. If a purchaser buys one or more compresses and operates them as his own property, competition is to that extent restricted, but being incidental, such contract is not invalid, and will not be held invalid because the purchaser may have taken a contract from the seller obligating the seller not to carry on or resume such business.

Fowle, et al. vs. Park, et al., 131 U. S., 88.
Gibbs vs. Gas Co., 130 U. S., 396.
Cin. P. B. S. & P. P. Co. vs. Bay, et al., 200 U. S., 179.
United States vs. Joint Traffic Association, 171 U. S., 505.
Bement & Sons vs. National Harrow Co., 186 U. S., 70, 92.
Navigation Company vs. Windsor, 20 Wall., 64, 68.
Diamond Match Co. vs. Roeber, 106 N. Y., 473
Tode vs. Gross, 127 N. Y., 480.

Beal vs. Chase, 31 Mich., 490.
Hubbard vs. Miller, 27 Mich., 15.
National Ben. Co. vs. Union Hospital Co., 45 Minn., 272.
Whitney vs. Slayton, 40 Me., 224.
Pierce vs. Fuller, 8 Mass., 222.
Richards vs. Seating Co., 87 Wis., 503.
National Enameling & Co. vs. Haveman, 120 Fed., 415.
United States vs. Addyston P. & S. Co., 29 C. C. A., 141; 85 Fed., 271.
Davis vs. Booth, 131 Fed., 31, 37; also 127 Fed., 871.
In re Greene, 52 Fed., 104.
Chicago, St. L., etc., Ry. Co. vs. Pullman, etc., 139 U. S., 79.

The Circuit Court of Appeals for the Sixth Circuit in the case of *S. Jarvis, et al. vs. Knapp*, 121 Fed., 39, state the rule as follows:

"The underlying principle upon which the modern cases upon this subject are grounded, is, that one cannot stifle competition by a bargain having that purpose only, yet, one who purchases something or acquires some right, the value of which may be affected by the subsequent conduct of the seller, the purchaser may lawfully obtain a stipulation from the seller that he will refrain from such conduct. In the present case the stipulation would increase the value of the benefit purchased by the corporation, and it was associated with that contract in its essence and in its purpose."

In the case of *Davis vs. Booth*, 131 Fed., 37, the Circuit Court of Appeals of the Sixth Circuit, say:

"There is a clear distinction which seems to be lost sight of in the argument here, between the aggregation

of property by purchase, when the seller no longer retains an interest in the property, and a combination of the owners of property under one management, where each owner's interest is continued in the combination. To this latter class belongs the case of the *Merz Capsule Company vs. United States Capsule Company*, (C. C. A.) 67 Fed., 414, affirmed in 71 Fed., 787. It may be that the practice of acquiring by a single corporation through purchase, of a great number of plants in several states, and of power to control the market of a given commodity in a wide area of territory, may become injurious to the public; but, if so, it would seem that the limitation and the means for correction and restriction required, must be supplied by the lawmaking power, since the old law against forestalling the market has become obsolete."

In this case, under the title of *Booth, et al. vs. Davis*, 127 Fed., 871, the Circuit Court gives a full statement of the facts which shows a striking similarity to the case at bar.

The court held that a covenant by the stockholders of a corporation, which sold its property, business and good will, that in consideration of such sale, and as an inducement thereto they would not directly or indirectly engage in the same or like kind of business as that carried on by the company in the same territory, or in the immediate vicinity of such territory for ten years after the sale, rests upon a good consideration, and is lawful, and the right of the purchaser to enforce it will not be affected by the question whether he has conducted the business lawfully since his purchase.

In the case just cited the contract under consideration, had the following stipulation:

"That in making said transfer and as an inducement to said William Vernon Boothe to purchase said plant, business and good will, and pay the sum aforesaid for the same, we have each agreed that we would not, and we now do agree each for himself jointly and severally with him, the said William Vernon Boothe, his heirs and assigns forever, that we will not during the next ten years, in the territory or the immediate vicinity of the territory, dealt in by our company, or operated in by ourselves, or the agents or employes of the company, engage or in any manner be interested in either directly or indirectly, for ourselves or for others, the same or like kind or character of business as that heretofore conducted and now being carried on by said company, and that we will not during the said period of ten years, either directly or indirectly be guilty of any act interfering with the business, its good will, its trade or its customers, or come in competition with the same, and we will not jointly or severally either in firms or corporations, or as individuals, or in any other way directly or indirectly interfere with the said trade or business, or do any act prejudicial to the same or any part thereof, or interfere with the persons employed therein; the meaning hereof being, that the said William Vernon Boothe is buying and paying for the good will of the business in the largest and fullest scope of the term; and that we will not, and each agrees that he will not do anything to interfere with or injure the said business, but will during said period lend his aid and best influence to the promotion and advancement of the same."

The defense was, first, that the contract was against public policy, and in restraint of trade; that it was void under the provisions of the Sherman Act, so called, and an act of the legislature of the State of Michigan, entitled: "An Act to prevent trusts, monopolies and combinations of capital, skill and art, and carrying out restraints in trade and commerce."

The court said:

"The transaction by which the complainant acquired the title and interest for which it seeks protection in this cause was an out and out purchase of the vendor corporations property and good will, and of the ancillary agreement of its stockholders, the breach of which agreement is the gravamen of the complainant's case. That such a transaction is lawful seems clear.

"In *United States vs. Addyston Pipe & Steel Co.*, 85 Fed., 271, 29 C. C. A., 141, 46 L. R. A., 122, Judge Taft considers the question here involved, and in a forcible opinion demonstrates that agreements by the seller of property or business not to compete with the buyer in such a way as to impair the business sold are perfectly valid. The opinion has so carefully and fully reviewed the authorities in support of this proposition as to exhaust the subject. The judgment of the Court of Appeals (except in a minor part having no concern with the main question) was affirmed by the Supreme Court of the United States. 175 U. S., 211."

The court further said:

"It is therefore a matter of no concern whether or not the complainant is conducting its business in such a way as to reduce the cost of its commodity, and to increase its profits in that way, or by raising the price otherwise. The contract of purchase which is made with the Davis Fresh & Salt Fish Co., and its agreement with the defendant Davis and the other stockholders, by which they engage not to compete, individually or otherwise, directly or indirectly, with the complainant, was a contract wholly collateral to the scheme and method of its business and its rights and equities under the contract of sale; and the agreement with Davis and the other stockholders can be enforced with as much propriety as any other lawful contract or agreement into which it might enter."

Atlanta vs. Chattanooga F. & P. Works, 127 Fed. Rep., 23.

Further on the court said:

"Examining this agreement between complainant and Davis, it will be found that it has no feature which the law condemns. It is limited, as to time, for the ten years ensuing its date; 'and to the territory or immediate vicinity of the territory dealt in by the company, or operated in by ourselves or the agents or employes of the company.' Its validity is fully sanctioned by the case of the *Oregon Steamship Navigation Co. vs. Winsor*, 20 Wall., 67; 22 L. Ed., 315."

In the case of *National Enameling & Stamping Co. vs. Haveman*, 120 Fed. Rep., 415, the court held that a restrictive covenant made by one capable of contracting, which is unlimited as to time, and in area covers the entire United States, is ancillary to the main lawful contract (being in part consideration of the payment of good will sold), and is reasonable, and no broader than is necessary to save to the covenantee the rights and privileges for which he has paid, and may be enforced.

In *Gibbs vs. Gas Co.*, 130 U. S., 396, 32 L. Ed., 979, decided in 1888, although the case turned upon other points, Mr. Chief Justice Fuller, speaking for the court, referred to the question of contracts in restraint of trade. He says, that the rule laid down in *Match Co. vs. Reynolds*, 1 P. Wms., 181, was made under a different condition of affairs and state of society than that which existed at the time of the opinion, and had been then even considerably modified.

"Public welfare is first considered, and if it be not involved and the restraint upon one part is not greater

than protection upon the part of one party requires, the contract may be sustained."

Carter vs. Alling, 43 Fed., 208, was decided by Judge Blodgett in 1890. Plaintiff had an ink and mucilage business, extending throughout the United States and Canada, and the defendant, their employe, agreed not to work for any competitor for three years after leaving the employ of the plaintiff. The contract was held valid. Several of the expressed views of the judge are enlightening, to say the least of him. Here are two quotations:

"In later years, a further relaxation of the old rule has grown up both in England and America, and the courts have repeatedly recognized the validity of contracts in restraint of trade throughout the entire state or country when such restraint was not unreasonable, in view of the nature and extent of the business of the covenantee."

"The modern agencies of commerce have enlarged the field for the manufacturer and salesman to, or even beyond, the limit of the continent; and to whatever extent a manufacturer or dealer has by his energy or enterprise made a market for his wares, to that extent he has the right to protect his business from piratical competition by contracts like the one under consideration."

In *Harrison vs. Refining Co.*, 116 Fed. Rep., 304, the opinion by Circuit Judge Jenkins indicates a disposition to take a view somewhat similar to that adopted in the above cases, although the same issues were not therein involved.

The New York Court of Appeals, in the case of

Diamond Match Co. vs. Roeber, 106 N. Y., 473, 13 N. E., 419, the court canvassed the general question of contracts in restraint of trade with much care and ability, and this is considered a leading case on the subject.

In that case a covenant between the seller and purchaser of a business that the former would not within the United States, except in Nevada and Montana, engage in like business for a period of ninety-nine years, was held valid.

The Supreme Court of the United States, in the case of the *United States vs. The Joint Traffic Association, supra*, in discussing the principle contended for by the appellants in this case, say:

"We are not aware that it has ever been claimed that a lease or purchase by a farmer, manufacturer or merchant of an additional farm, manufactory or shop, or the withdrawal from business of any farmer, merchant or manufactory, restrained commerce or trade within any legal definition of that term; and the sale of a good will of a business with an accompanying agreement not to engage in a similar business was instanced in the Trans-Missouri case as a contract not within the act, and it was said that such a contract was collateral to the main contract of sale, and was entered into for the purpose of enhancing the price at which the vendor sells his business."

The decisions sustaining contracts in restraint of trade which cover particular cities or towns or small localities are almost innumerable. Such contracts are usually made in connection with the sale of some business, industry or practice. Among the decisions are the following:

Peltz, et al. vs. Eichele, 62 Mo., 171.
Washburn vs. Desch, 68 Wis., 436.
Ellis, et al. vs. Jones, 56 Ga., 504.
Grundy vs. Edwards, 30 Ky., 368.
Johnson vs. Gwinn, 100 Ind., 466.
Dean vs. Anderson, 102 Mass., 480.
Hursen vs. Gavin, 162 Ill., 377.
Eddy on Combinations, Secs. 762, 789.

In the case of the *State vs. Shippers' Compress & Warehouse Company*, 95 Texas, 603, 69 S. W., 58, the Supreme Court of Texas, discussing the policy of the Andersons in acquiring a number of compresses in the northern part of the state of Texas, and applying the principles to a state of facts similar to those involved in this case, say:

"In determining the question of intention, we must consider as true every fact which can be fairly inferred from the evidence; and we are of opinion that the acquisition on the same day of six compresses, situated in localities distant from each other, will support the inference that the purpose of the promoters in organizing the corporation was to acquire these properties; and if the facts show that in doing so they violated the law, then we are of opinion the evidence will justify the conclusion that their intention in forming the corporation was to accomplish the unlawful purpose. It was not unlawful for the corporation to buy all of the properties that it acquired, nor was it unlawful for them to acquire all of them at the same time; and we see nothing in that fact which tends to show that the object at the time of organizing the corporation was to do a lawful act to effect an unlawful purpose."

In the same case the Court of Civil Appeals of the State of Texas use the following language:

"The mere fact that an individual or a number of individuals lawfully associated together in business may, by purchase which is permitted by law, acquire title to much of the property in a community, which may produce a certain commodity, or which may be used in converting commodities into articles of commerce, does not necessarily create a monopoly. There is no restriction imposed upon the limit of a man's purchases, provided it is not done to accomplish an illegal purpose. One may, if financially able, acquire much or all of the property of a given class, provided the purchase was not made for the purpose of injuring or accomplishing harmful results to the public; and from a bare exercise of this privilege it cannot be inferred that the purpose and intention were to create a monopoly or that a monopoly necessarily results from such extensive acquisition."

State vs. Shippers' Compress & Warehouse Company, 67 S. W., 1049.

The record in this case discloses that in the territory immediately around Oklahoma City and Shawnee at the time of the trial of this case there were in operation the following compresses: Sapulpa, Muskogee, South McAlester, Hugo, Ada, Shawnee, Ardmore, Pauls Valley, El Reno, Chickasha, Snyder and Hobart, a total of thirteen, out of which the Gulf Compress Company was operating three. (See printed record, page 80.) The record does not disclose that even this number embraces all of the compresses operated in the two territories, which in fact it does not. The question upon which the Supreme Court of Oklahoma reversed this case was not the real question presented and contested in the trial court, and the record therefore does not show the entire num-

ber of compresses within the boundaries of these two territories.

The record discloses that the Gulf Compress Company has not acquired this property for the purpose of obtaining a monopoly of the compress business, but, as stated by the president of the company, acquired only desirable property as an investment. (Printed record, page 61.) In the territory soon to be embraced within the State of Oklahoma, the Gulf Compress Company has control of three compresses, and the record shows thirteen are being operated in the proposed state; in Little Rock, in the state of Arkansas, the Gulf Compress Company owns one press out of five in that city, and owning but the one compress in the state of Arkansas. It owns or operates twenty-three compresses located at various points in the states of Alabama, Mississippi, Tennessee and Louisiana, or twenty-seven in all. There are two compresses at Greenville, Mississippi, one of which is owned by the Gulf Compress Company, and the other by a competing company; there are two compresses at Dyalsburg, Tennessee, one of which is owned by the Gulf Compress Company, and the other owned by a competing company. (See printed record, page 57.)

The Gulf Compress Company with twenty-seven compresses, six of which are located in the city of Memphis, and remainder scattered over the cotton growing states, certainly does not control any considerable proportion of the cotton compression business of the United States. This case not being presented in the trial court upon the theory upon which it was decided in the Su-

preme Court of the territory, this feature of the case was not developed in the evidence as thoroughly as it would have been had the case been tried on that theory, and while the record shows that the Gulf Compress Company controlled and operated less than one-fourth of the cotton compresses in the proposed state of Oklahoma, had inquiry been prosecuted at the trial as to the number of compresses in the state, it would have developed that the Gulf Compress Company really controlled a very small portion of this business, as there are of course a great number of compresses located in the proposed state of Oklahoma, which are not mentioned in the record, but only those supposed to be competitors of the Shawnee Compress Company were mentioned. We do not believe that from the record in this case it can be fairly said that the Gulf Compress Company has ever had any monopolistic tendencies or that its object has ever been the monopolizing of the compress business.

The Territorial Supreme Court complains that the contract having a provision in it inhibiting the Shawnee Compress Company from engaging in business within fifty miles of Shawnee makes it a contract restricting competition.

The statutes of Oklahoma expressly authorize a contract of this character. Sections 819 and 820 of Wilson's Revised and Annotated Statutes of Oklahoma read as follows:

"Sec. 819. Every contract by which one is restrained from exercising a lawful profession, trade, or

business of any kind, otherwise than as provided in the next two sections, is to that extent void.

"Sec. 820. One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified city, county, or part thereof, so long as the buyer or any person deriving title to the good will from him carries on a like business therein."

Both of these statutes were adopted from the statutes of California and have been frequently construed by the Supreme Court of that state.

Brown vs. Kling, 101 Cal., 295, 35 Pac., 995.
Gregory vs. Spejker, 110 Cal., 150, 42 Pac. 576.
Ragsdale vs. Nagle, 106 Cal., 332, 39 Pac. 628.
City Carpet Beating, etc., Works vs. Jones, 102 Cal., 506, 36 Pac., 841.
Vulcan Powder Company vs. Hercules Powder Company, 96 Cal., 510, 31 Pac., 581.

Under these sections of the statute one who leases a compress and its good will may enter into a contract to refrain from carrying on a similar business within a specified county. The contract of lease in controversy limits such competition to fifty miles. The evidence did not disclose whether a radius of fifty miles would have carried it without the boundaries of the county or not, but if fifty miles was an excessive restriction, the excess only was invalid and the restriction might be enforced within the limits of the law.

Such a contract being valid could not serve as a basis for concluding that it would be against public policy by creating an unnecessary restraint of trade, preventing competition and creating a monopoly.

We believe the proper rule is enforcement of the contract against competition within the limits of the county under the provisions of the Oklahoma statute, but if this restriction is invalid, it will be eliminated by the court and the remainder of the contract will be enforced.

c.

Justice Pancoast, speaking for the court, also says at page 221 of the printed record:

"Nowhere by the terms of the contract we are construing is the Gulf Compress Company obligated to continue the Shawnee plant in operation as an active factor in the cotton compress business. Its machinery might lie idle, its industry cease, for all the contract obligates them to the contrary."

Justice Pancoast evidently overlooked paragraph 10 of the lease contract found on page 20 of the printed record, which reads as follows:

"It is expressly stipulated that the landlord will do all that it reasonably can to make the operation of the compress in the hands of the tenants a success; that the enterprise shall be managed on sound business principles and in such manner as will tend to cooperate with the shippers, merchants and others at interest in building up and maintaining the cotton markets at Shawnee. The landlord agrees and pledges the tenant its good will, moral and real support, and that it, individually and collectively, will render the tenant any assistance in discouraging unreasonable and unnecessary competition, the purpose of both landlord and tenant being to increase the business of the compress at Shawnee as well as that of the planting and commercial community. *The tenant further agrees to in nowise use its other compresses to the detriment of the Shawnee compress or the Shawnee cotton market during the term of this lease.*"

A fair construction of this provision of the contract of lease, we believe, answers the whole objection found by the Supreme Court of the Territory of Oklahoma to the terms of the lease. The tenant, the Gulf Compress Company, agreed that it would manage the enterprise on sound business principles, and in such manner as would tend to co-operate with the shippers, merchants and others at interest in building up and maintaining a cotton market at Shawnee, and that it would in no way use its other compresses to the detriment of the Shawnee Compress Company or the Shawnee cotton market during the term of the lease. A fair construction of these provisions mean that it would, during the term of its lease, operate the compress at Shawnee on sound business principles, and that it would not use any of its other compresses to the detriment of the Shawnee compress, and answers the argument of Justice Pancoast that

"Nowhere by the terms of the contract we are construing is the Gulf Compress Company obligated to continue the Shawnee plant in operation as an active factor in the cotton compress business."

And answers the argument that

"The Gulf Compress Company might establish a compress at any competitive point it pleases and thereby wholly extinguish competition through these companies bound by its leases."

The court below overlooked a well recognized principle which would control in any event in the disposition of this case. If the Gulf Compress Company itself was

a monopoly, the Shawnee Compress Company could not for that reason prevent the specific performance of a contract for sale or lease, and, *a priori*, the minority stockholders could not interpose to prevent such performance.

Trenton Pottery Co. vs. Olyphant, 51 N. J. E., 507, 43 Atl., 723.
Diamond Match Co. vs. Roeber, 106 N. Y., 473, 13 N. E., 419.
Metcalf vs. American School Furniture Co., 122 Fed., 115-120.
Connolly vs. Union Sewer Pipe Co., 184 U. S., 547, 22 S. C. R., 431.
Willoughby vs. Chicago Junction Ry. Co., 50 N. J., 656, 25 Atl., 277.

In the case of the *Trenton Potteries Company vs. Olyphant, supra*, at page 729 of the 43d Atlantic Reporter the court say:

"A person engaged in any manufacture or trade, having the right to acquire and possess property, and to do with it what he chooses, may lawfully buy the business of any of his competitors. His first purchase would at once diminish competition. * * * If his capital was large enough to permit him to buy the business of all competitors the last purchase would completely exclude competition, at least, for a time. But in the absence of legislative restrictions, if same could be imposed, upon the acquisition of such property, and its use when so acquired, courts could impose no limitations. They would be obliged to enforce such contracts, notwithstanding the effect was to diminish or even exclude competition. But the appellant is a corporation and not an individual. Corporations, however, may lawfully do any acts within the corporate powers."

SECOND.

The Supreme Court of Oklahoma should have denied the Andersons relief because they came into equity with unclean hands.

Practically the whole of the capital stock of the Shawnee Compress Company was owned by W. H. Beatty, T. F. Stubbs, Anderson, Clayton & Company, Neil P. Anderson & Company and John E. Portis, all of whom were cotton buyers. (Printed record, page 115.) Beatty and Stubbs, the owners of the majority of the stock, had operated the plant the preceding year at a loss of $2,042.53. (See printed record, page 199.) The operation by these cotton buyers of this plant and the compression of their own cotton gave to such shippers an advantage over competitive buyers and conflicted with section 3 of the provisions of the Interstate Commerce law. In the effort made by the Gulf Compress Company to lease the property this matter was fully presented. The Andersons, who were interested in twenty other compresses, were insisting on retaining possession of this compress, so that they might continue to enjoy the illegal advantage resulting to them from compressing their own cotton at their own plants. This design on their part was illegal and a court of equity would not interfere to advance such claims.

The Interstate Commerce Commission, in the case of the *Muskogee Commercial Club, et al. vs. Mo., Kan. & Tex. Ry. Co.*, 12 I. C. C. Rep., 356 decided in July, 1907, had under consideration the plan and policy adopted by the Gulf Compress Company, and its leasing of plants,

and the propriety of cotton buyers operating compresses, and among other things, Commissioner Lane says:

"The compress at Muskogee is operated by a professional compressor. It does not buy, sell, or deal in cotton in any manner, directly or indirectly; it receives 'flat' cotton from the railroad company, receipts for it, insures it, compresses it and loads it—all services for the carrier and for which the carrier pays. There are no charges to the shipper. No shipper, it is clear, can secure any favor or advantage over any other shippers through this compress, since it knows no shipper in the transaction. On the other hand, the compress at South McAlester is owned and controlled by the Lesser-Goldman Cotton Company, one of the heaviest cotton buyers and shippers in the territory. Through this compress it handles its own cotton and that of other buyers.

"The charge for compression—in the Indian Territory, 10 cents a hundred, or about 50 cents a bale—is paid by the carrier to the compressor out of the freight rate collected by the carrier from the shipper.

"If then the compressor to whom this 10 cents a hundred is paid is also a shipper, the transaction amounts to a return to the shipper of that amount. So much of the ten cents as is not expended in operating the compress is clearly gained to the compressor shipper over every other shipper. The freight rate paid to the compressor shipper is thus 10 cents a hundred less than the rate paid by the shipper, who does not own a compress, and to whom this amount is not returned.

"His net advantage is such part of the 10 cents as he does not expend in the operation of the compress; in other words, the profit in compression. This profit it is not easy to judge from the record, but it is estimated by witnesses at from 15 to 20 cents a bale.

"In addition to this, the buyer who operates a compress has the advantage, if he chooses to use it, of an

intimate knowledge of the buying, selling and shipping arrangements of every other cotton buyer whose cotton passes through his press; he knows where the cotton is bought and where it is to be sold, and the opportunity is thus open to him to compete most effectively at both ends of the market.

"He has also practical control over the movements of his competitors' cotton. If the compress is congested, and some cotton must be delayed in compression, he can put his own through and hold that of his rival. If cars are scarce and all the cotton cannot be shipped, he can ship his own and leave that of the other buyer standing on the platform. In short, the railroad company which accepts goods for transportation can so deal with those goods as to place one shipper under a business disadvantage with relation to his rivals. This is not an ideal condition of things, and sooner or later a way must be found by which carriers will be denied opportunity to pursue any such practices.

"The railroads must, if they wish this cotton compressed, for their own convenience, either go into the business of compressing for themselves, or give such work to those who have no interest whatever in the buying or selling of cotton."

Under this decision the railroads must contract for compressing with independent concerns, such as the Gulf Compress Company, or they must go into business as they have done in organizing the Atlantic Compress Company, and must refrain from having their compressing done at plants owned by the shippers or be subject to heavy penalties for rebating.

Under the decision of the Supreme Court of the Territory in this case, the two companies, because of their plan and organization, their methods of doing business,

the objects sought to be attained, are declared illegal, and it is ordered that this plant shall be placed under the control of the cotton buyers, while the Interstate Commerce Commission approves the plan, methods and objects of both companies. We submit that the Interstate Commerce Commission is right and the Supreme Court of the Territory is wrong in the premises it accepted and the conclusions it deduced. The Andersons' motives in desiring to obtain possession of the plant, even by legal process, being contrary to the policy and the regulations of interstate commerce, cannot receive any support in a court of equity. Their motives were constructively fraudulent, because the ends which they seek would be contrary to the provisions and policy of the law.

Not only, however, is their conduct reprehensible because the ends sought are prohibited by section 3 of the act to regulate interstate commerce, but also because they sought by wrongful means to force the sale of the Shawnee property to themselves at a sacrifice.

They were large stockholders in the Traders' Compress Company and the Shippers' Compress & Warehouse Company. In twenty of the compresses owned and maintained by these companies B. L. Anderson, for Anderson, Clayton & Company, had the active control. (See printed record, page 139.)

An examination of the evidence will disclose that the Andersons acted in bad faith in their dealings with the Shawnee Compress Company. The Andersons were fully advised of the financial exigencies of the company. Its creditors had caused notes that had matured to be

presented to them, and upon their non-payment had protested the same. On the 25th of January, 1905, B. L. Anderson wrote to F. E. Anderson advising him that one of the serial notes aggregating $18,000.00, with interest, long past due, executed by the Shawnee Compress Company to the Webb Press Company, Limited, had been presented to him for payment and protested. (See printed record, page 199.) They had also attended the meetings of the Shawnee Compress Company's directors and stockholders and knew and were fully advised of the dire straits in which the company was situated and the urgent necessity of in some way raising moneys to meet its matured obligations. It was their duty as stockholders and directors to have come to the assistance of the Shawnee company and to have, if possible, tided it over its temporary embarrassments. The evidence shows that they, with resources to help, with capital anxious to invest, pressed their offer to buy, threatened the company with competition, and sent telegrams discouraging and threatening others who were investigating the situation. (See printed record, pages 130 and 132.) The evidence shows that when the mortgage indebtedness, amounting to nearly the available assets of the corporation, was matured and pressing, its interest unpaid, checks were being protested, earnings garnisheed, laborers demanding their weekly pay, the property advertised for taxes, that they sat supinely by, with means to assist, content to offer but 14 cents for the stock, or $25,000.00 for the plant, but unwilling to do anything to help the company. (See Record printed, page 95.) Mr. Beatty asked in the stock-

holders' meeting if he (Anderson) would agree not to erect a press in Shawnee if the company would not make the lease, and Anderson answered that he would not (Record printed, pages 136, 137.)

The evidence shows and both of the lower courts found that at this time some effort was necessary to raise funds to meet the matured indebtedness. It was in this extremity that Beatty, as secretary of the Shawnee company, turned to the Gulf Compress Company for assistance, and the Gulf company offered to take up and pay the outstanding indebtedness upon the condition the Shawnee company would execute the lease in controversy. The Andersons, in their testimony at page 160 of the printed record, excuse their indifference to the welfare of the Shawnee company by stating that they were not asked to assist the company or to make any suggestions as to where assistance could be obtained, though they were present and participated in the meetings of the stockholders where several propositions were being considered to raise funds to meet current expenses. They admit also, that they were anxious to purchase the plant.

Their unfairness is emphasized by the evidence of Mr. Hanson on page 131 of the printed record, where Anderson requested Mr. Hanson to withdraw his lease offer, and after referring to conversations had with the Andersons in Memphis, in which Mr. Anderson stated that he was at a previous time about to close for the Oklahoma City Compress and Hanson came in and offered more than the plant was worth and got it, and after referring to the conversation had between the witness and

Anderson in Texas, in which Anderson stated that he had a man in Shawnee adjusting the affairs, he testifies that Anderson used the following language:

"This is our territory and you ought to keep out of it."

And that he had undertaken to get control of the Shawnee property and had "had a man in Shawnee trying to get the compress off and on for the past thirty days."

On the same date of this conversation, Mr. Hanson while *en route* from Memphis to Shawnee received a telegram in care of the conductor of the westbound train, as follows: (See printed record, page 197.)

"There is a trick on at Shawnee. I will arrive there about 3:20 o'clock on the Choctaw. Please quietly meet train. If you lease Traders' Company will build immediately Shawnee and Oklahoma City.

"(Signed) B. L. Anderson."

And also after arriving at Shawnee, Mr. Hanson received another telegram (see printed record, page 196) which read as follows:

"I will reach Shawnee about 3:20 on Choctaw. Delay negotiations until then and meet train and I will give you some valuable information.

"(Signed) B. L. Anderson."

On the same date F. E. Anderson sent a telegram to C. J. Benson at Shawnee (see record, page 179) in which he stated:

"Missed train. Cannot agree to lease but if you do so over my veto think you should have clause in contract if property sold lease to be annulled."

The Andersons are deserving of special condemnation for their conduct at the stockholders' meeting held on the 23rd of April, 1905, at which time the stockholders were electing a board of directors. None of the stockholders present at the time were charter stockholders of the company and none of them were informed as to the number of directors that the corporation was required to have under the charter, except the Andersons. After discussing the question in their presence, Mr. Benson was directed to wire to the secretary of the territory and obtain this information. The telegram was sent and an answer was received, in which the Secretary of the Territory stated that the articles of incorporation called for three directors. This was an error. The Andersons knew that it was an error. They also knew that the other stockholders believed it was correct, and in reliance thereon the stockholders proceeded to elect a board of directors of three members. At no time did the Andersons or either of them suggest to their colleagues and associates that five directors were required. This conduct of the Andersons viewed by an ordinary mind is capable of no other construction than that they were willing to oppress the corporation and the majority stockholders in any manner and to any extent; to coerce a sale of its plant or their holdings, and in case it resorted to any other measure to avoid such sacrifice, that they would be in po-

sition to insist that there had been no legal directory provided.

When a minority stockholder attempts to interfere with a majority in the management of the corporate property the rules of equity require that he shall not only be prompted by pure motives but that he shall have exhausted all means to have obtained a rescission of the wrongful acts by the board of directors or the majority stockholders.

Hawes vs. City of Oakland, 104 U. S., 450.

We cannot conceive how the Andersons can have any standing in a court of equity measured by this standard, because they not only failed to demand of the majority stockholders and the directors a change in their policy and plans of management, but remained silent at the meetings of those stockholders when they were discussing some plan by which moneys could be raised to meet expenses and when they were trying to elect a legal board of directors, with a knowledge of the legal requirements for such board, and failed to give any assistance in either of these matters. They knew that their associates were acting in the highest good faith in the election of the board of directors, and participated in the amendment of the by-laws changing the number of members of the board from nine to three without suggesting the invalidity of such by-laws.

The concealment of a fact by the statutes of Oklahoma is made an actual fraud. Wilson's Revised and Annotated Statutes, Sec. 743, Subdivision 3.

The rule which prevents the leasing of all of its property by a corporation also prevents the sale. The greater, of course, includes the less. The plaintiffs by attempting to coerce a sale to them were violating a principle which they claim was violated in the lease. The Supreme Court of New York say:

"In dealing with questions of this nature (an injunction against an unlawful act) the court should be studious to see that the rights of all parties are protected, and that the forms of law should not be permitted to be used on behalf of one party against another, when the party seeking the intervention of the court has been endeavoring to secure his ends by means similar to those which he seeks to enjoin on the part of his antagonist."

Sinsheimer vs. Union Garment Workers, 77 Hun, 215, 28 N. Y. S., 321.
McVey vs. Brendel, 144 Pa. St., 235, 27 Am. St. Rep., 625, 22 Atl., 912.
Dickinson vs. Consolidated Tr. Co., 114 Fed., 232, 240.
Richardson vs. Walton, 49 Fed., 888.
Brutsche vs. Bowers, 122 Iowa, 226, 97 N. W., 1076.

In *Richardson vs. Walton, supra*, page 894 of the 49th Federal, Circuit Judge Ackerson, discussing this proposition, says:

"But if a different conclusion on the facts were admissible, still in our judgment plaintiff would not be entitled to the relief he seeks for several reasons. In the first place, his secret purchase on his own account of competitive works, his unauthorized use of the notes of Walton, Wahn & Co., in effecting the purchase; his underhand arrangement with old and valued employes

of the firm, whereby their services were to be withdrawn from the firm and transferred to his rival establishment, and having acquired this advantage, his attempt to coerce his co-partners into selling their interests to him under threats of liquidation by legal proceedings—*were all acts so faithless and unfair to the defendants as to deprive plaintiff of any standing in a court of equity in this controversy.*"

If the plaintiffs' hands are unclean, they are also precluded from taking advantage of irregularities in the board of directors.

> *California Redwood Co. vs. Litle*, 79 Fed., 854, 857.

We submit that paragraphs 12, 13 and 14 of the answer found on pages 37, 38 and 39 of the printed record are supported by the proof, and that the appellees, plaintiffs in the courts below, having come into equity with unclean hands, are entitled to no relief.

THIRD.

In the sixth assignment of error argued herein, under the third subdivision, the Territorial Supreme Court is charged with erring because of its order reversing the judgment and directing the lower court to enter judgment for the plaintiffs in that court.

Counsel in the trial court conceded the real issue to be the question of *ultra vires* and the evidence offered on either side was directed to this issue. Incidentally the question of public policy was considered. It is apparent from an examination of the record that this question was

not presented fully to the trial court. As shown elsewhere in our brief there was no showing made of the number of compresses situated in the field occupied by the Gulf Compress Company. There was no attempt to show that only a very inconsiderable portion of the cotton growing territory was covered, and no effort to show that out of a crop aggregating 13,000,000 bales for the preceding year, the insignificant portion of which had been handled by the Gulf and the Atlantic Companies. We therefore insist that if the Supreme Court of the Territory regarded this question as controlling in the case, it became their duty to reverse the case and remand it for a new trial upon that issue.

"While it is impossible to lay down rigid rules regarding the power of appellate courts to remand cases, yet it may be stated as partly true that whenever it appears to be necessary for the purposes of justice the appellate court will remand for such further proceedings as the circumstances in the case may require."

18 Cyc., 453.
Wiggins Ferry Co. vs. Ohio & M. Ry. Co., 142 U. S., 396.

Two other questions were presented in the Supreme Court of Oklahoma by the plaintiffs therein, appellees herein, and on which they asked for a reversal of the decree rendered in this action.

The first question was, that the lease in controversy was beyond the scope of the chartered powers of the Shawnee Compress Company and was *ultra vires* and void, and the second was, that the lease was not executed

by parties authorized to represent the Shawnee Compress Company.

Believing that this Court would look to all questions raised, and if, in the judgment of this Court the judgment rendered by the Supreme Court of the Territory was proper, would affirm it, notwithstanding this Court might conclude that the contract of lease was not contrary to public policy; we anticipate these two propositions and desire to submit in support of the position of the appellants herein the following presentation of these questions.

Appellees urged in the Territorial Supreme Court that the case of *Thomas vs. Railroad Co.*, 101 U. S., 71, supports the proposition that a corporation cannot lease all of its property, thereby abandoning for a term of years its corporate business. We believe this is a misapplication of the principle laid down in *Thomas vs. Railroad Company, supra.*

The case of *Thomas vs. Railroad* was not a departure even at that time from the generally established law with reference to the sale of properties by public corporations, but was a confirmation of that principle, and in this decision the court declared a lease invalid, primarily for the reason that it was against public policy for a public or a *quasi* public corporation to sell or dispose of its entire property. It incidentally discussed the power of such corporation to sell independent of the right of eminent domain, but in all like cases in the Supreme Court of the United States, and in the Supreme Courts of the several states, this decision has been con-

strued as limiting the rights of *quasi* public corporations to sell or lease their property, as resting upon the assumption by such corporations of duties to the public in consideration of the grant to such corporations of the right of eminent domain and other privileges.

Mr. Justice Gray, in the case of *Davis vs. Old Colony Railroad*, 131 Mass., 258, 271, then a member of the Supreme Court of Massachusetts, in construing the case of *Thomas vs. Railroad Company*, stated that such principle rested not only upon the public nature of such corporations, but upon the further proposition that corporations could not alienate their property without legislative sanction or consent, but Mr. Justice Gray, afterwards, as a member of the Supreme Court of the United States, in the case of *The Central Transportation Company vs. Pullman Company*, 139 U. S., 24, reviews all the cases, and particularly the case of *Thomas vs. Railroad Company, supra*, and uses the following language:

"The plaintiff, therefore, was not an ordinary manufacturing corporation, such as might, like a partnership, or an individual engaged in manufactures, sell or lease all its property to another corporation."

He cites in support of this proposition the cases of *Ardesco Oil Company vs. North American Oil Company*, 66 Pa. St., 375, and *Treadwell vs. Manufacturing Co.*, 7 Gray, 393, and continues:

"But the purpose of its incorporation, as defined in its charter and recognized and confirmed by the legislature, being the transportation of passengers, the plain-

tiff exercised a public employment and was charged with the duty of accommodating the public in the line of that employment. * * * The plaintiff was not a strictly private but a *quasi* public corporation, and it must be so treated as regards the validity of any attempt on its part to absolve itself from the performance of those duties to the public."

Thus, the Supreme Court of the United States announced that the rules with reference to *quasi* public corporations and private corporations were different, and this distinction has been followed and applied in every adjudicated case within the last quarter of a century which we have been able to find.

Reese on Ultra Vires, in section 137, in discussing the case of *Thomas vs. Railroad Company*, states the principle as follows:

"This rule is based upon the theory that public or *quasi* public corporations which possess and exercise the right of eminent domain, or its equivalent, owe duties to the public as well as to their stockholders; and they cannot sell or lease their corporate powers and privileges, and thereby disable themselves from performing their public duties without legislative authority."

In the case of *Morriset vs. Howard*, 62 Kans., 463, 63 Pac., 756, the Supreme Court, in discussing the power of a private corporation to dispose of its assets, emphasize the distinction between a private and a *quasi* public corporation. It says:

"The mercantile company was organized for the purpose of buying and selling merchandise at retail, but

this does not preclude the company from disposing of its property and closing out its business, if it is done in good faith and not for the purpose of defrauding and delaying its creditors. Counsel cites a number of cases to the effect that a corporation cannot abdicate its corporate functions and absolve itself from carrying out the objects of its creation by a transfer of its entire property, or by otherwise disabling itself from performing its corporate duties. The doctrine of these cases is applicable to corporations established for *quasi* public purposes, such as railroads and other companies having the right of eminent domain and other extraordinary privileges, but it has no application to corporations of a strictly private character, like the one in question. The mercantile company exercises no powers of a public nature, and a sale of its property and the retirement from business do not contravene public policy or affect the public in any way."

All the cases cited by counsel for the appellees and relied on in the Territorial Supreme Court are cases applying to public or *quasi* public corporations, except the case of *Small vs. Minneapolis Electro Matrix Company*, 45 Minn., 264. But the Minnesota case has no application. The Supreme Court of Minnesota in this last cited case say:

"We need not inquire how far or under what circumstances, considerations of public policy and of general interests of the state may affect the right of a corporation to discontinue the business for which it was created, and to surrender to another corporation its property and the conduct of such business."

Such circumstances referred to in this quotation would be the existence of some exigency. No attempt was made in the Minnesota case to prove that the condi-

tion of the corporation demanded or required that such a lease should be made, but it was one of the many cases that may be found in the books where one corporation attempts to change its property for stock in another corporation. Such attempts have been universally enjoined in equity.

It is true that in many instances, and perhaps all, the courts require some exigency to exist which imperils the business, or threatens the property of the private corporation, before permission is given to lease its entire plant, but such exigency arises when the property of the corporation is threatened to be sacrificed by creditors, who hold matured indebtedness and insist upon payment.

The necessity of the corporation taking some action in the case at bar to raise money to pay the interest due on the first mortgage, to take up the second mortgage of the Shawnee National Bank, to pay salaries, and to settle taxes, is written in emphatic and indelible language upon every page of the evidence in this case, and such evidence was stamped with judicial sanction by the findings of the trial court and the Supreme Court of the Territory of Oklahoma.

Equity looks at the substance of things and not at mere names. Equity would therefore regard a lease for a period of five years not as a sale, but as a temporary suspension of the privileges and functions of the corporation.

There is a distinction between a temporary lease and a lease for a long period of time, or a sale of the prop-

erty. In the case at bar, the lease would run for a period of five years, at which time the corporation would be out of debt, with its property in repair, and such lease would not be equivalent to an abandonment of its duties and privileges as a corporation. This distinction should in equity be controlling in this case.

In the case of *Price vs. Holcomb*, 89 Iowa, 123, it was held that where the business of the corporation had been run at a loss and its works had been idle because the corporation was without necessary working capital, and because it was unable to secure it, and no practical plan for putting the works in operation had been agreed upon, though frequently discussed, and it was apparent that no agreement could be reached by which the works could be operated or leased, a sale should be made of the property and business of the corporation against the protest of the minority. In that case the minority stockholders, to escape the force of the sale, had made an indefinite offer to lease the property. The principle was sanctioned in this last cited case, that had the minority been able to obtain a definite and reasonable lease, which would have saved the company from the perils of a disastrous business, the court of equity would have perhaps prevented the sale and required the corporation to enter into the lease, but because of the indefiniteness of the said lease offer, the court permitted the sale. This case was cited and approved in the case of *Tracy vs. Lucas Prospecting Company*, 124 Iowa, 107.

The case of *Phillips vs. Providence Steam Engine*

Company, 21 R. I., 302, 43 Atl., 598, states the rule, in the syllabus, to be:

"Where a sale of a corporation's business is necessary, because no longer profitable, a private sale agreed to by the majority stockholders will not be enjoined in a suit by the minority stockholders."

While the question in this case was as to whether the sale should have been at public or private sale, the court very forcefully states the rule as follows:

"There is a difference of opinion as to the power of a corporation to sell its entire property and thus practically to retire from business. Some courts hold that it may be done by the consent of all the stockholders (7 Am. and Eng. Enc. of Law, page 734, note 1), and others hold that it may be done by a majority (*Id.* notes 2-4). All of the authorities cited in note 1, however, do not hold that the consent of all of the stockholders is necessary, e. g., *Treadwell vs. Manufacturing Co.*, 7 Gray, 393; *Wilson vs. Miers*, 100 E. C. L., 348, and others. But the editor adds: There seems to be no doubt that it may do so, when it is no longer able to profitably continue its business. We think that this is the correct rule. It has been recognized in this state, *Hodges v. Screw Co.*, 1 *R. I.* 312, 350. In *Wilson v. Proprietors*, 9 R. I., 590, Brayton, C. J., said: 'No case has been cited, and in view of the diligence of counsel in this case, we may say there is no case which holds that where the purpose of the incorporation could not be accomplished, and the business contemplated could not be carried on—where the capital has been exhausted in endeavors to go on, having no means to go further—a company thus laboring under burdens which they could no longer bear, could not release themselves by a surrender of their franchise to the state which granted and which was willing

to receive it, and that by a majority. This is not only for their benefit, but it is a necessity, and it would be hard, indeed, if one stockholder could, by his dissent, prevent such relief, against the prayer of all other members of the company."

In the case of *Plant v. Macon Oil & Ice Company*, 103 Ga., 666, the Supreme Court of Georgia have analyzed the principle involved in this case and say:

"Upon a cursory glance at the authorities above cited and a number of others we have investigated upon the subject, there would seem at first to be an irreconcilable conflict upon the powers and rights of a majority and the minority of stockholders in a private corporation, touching its authority to alienate or lease its property and franchises. But we think that nearly, if not quite all of the authorities upon the subject can be reconciled, and that from a careful consideration of all of them together, can be deduced the following principles, about which there seems to be very little, if any, conflict: 1st. While a public or a *quasi* public corporation cannot without express authority, convey or lease its property and privileges, as a general rule, this can be done by a private corporation. * * * 4th. A minority of stockholders cannot compel a corporation, against the wishes of a majority of the owners of stock therein, to continue a business that would be unprofitable or ruinous in its results to the interests of all concerned. * * * From these principles it follows as an inevitable conclusion that a private corporation has the right temporarily to lease or rent its property when the purpose of such action is not an abandonment of its franchises, but to meet an urgent necessity of raising a fund so as to enable it afterwards to conduct its business profitably, and to continue the enterprise for which it was created."

In support of the right of a private corporation to lease its property when an exigency demands it, we call the court's attention to the following cases which sustain the contention of the appellants, in addition to those heretofore cited and discussed:

Treadwell v. Salisbury Mfg. Co., 7 Gray 393.
1 Mor. Priv. Corp., Sec. 413.
Wood's Field's Corporations, Sec. 445.
Cook's Stocks, Sec. 667.
Price v. Holcomb, 89 Iowa 123, 56 N. W. 407.
Miners' Ditch Co. v. Zellerbach, 37 Cal. 543. 99 Am. Dec. 30.
Berry v. Broach, 65 Miss. 450, 4 So. 117.
Doyle v. Leitelt, 97 Mich. 298, 56 N. W. 553.
Skinner v. Smith, 134 N. Y. 240, 31 N. E. 911.
Freeman v. Seaview Hotel, 57 N. J. E., 67, 40 Atl. 218.
Tanner v. Lindell Ry. Co., 180 Mo. 1, 79 S. W. 155, 103 Am. St. Rep. 535.
State v. Western, etc., Co., 40 Kans., 96, 19 Pac., 349.
Levering v. Bimel, 146 Ind., 545, 45 N. E., 775.
Bartholomew v. Derby, 61 Am. St. Rep. 59, 69 Conn., 521, 38 Atl., 45.
1 Beach Corporations, sec. 580.
Hancock v. Holbrook, 9 Fed. 353.
Byrne v. Schuyler Elec. Mfg. Co., 65 Conn., 336, 31 Atl., 833.
Hodges v. Screw Co., 1 R. I., 347.
Wilson et al., v. Miers, et al., 100 Eng. Com. L., 348.
Warfield v. Marshall Co. Canning Co., 72 Iowa, 666, 34 N. W. 467.
Leathers v. Janney, 41 La. Ann., 1120, 6 So., 884.
Laumann v. Lebanon Valley R. R. Co., 30 Pa. St., 42.

Simpson v. Hotel Co., 8 House of Lords, 707.
26 Am. & Eng. Enc. of Law, 2nd Ed., 965.
10 Cyc., 1138.

In many cases this right to lease or sell in case of emergency is assumed as a matter of course even when relief is granted upon other grounds, such as fraud to the minority stockholder.

Byrne v. Schuyler Mfg. Co., 65 Conn., 339, 31 Atl., 833.
Sewell v. East Cape May Beach Co., 50 N. J. E., 717, 25 Atl., 929.
Rothwell v. Robinson, 44 Minn., 538, 47 N. W., 255.
Shaw v. Davis, 78 Md., 308, 28 Atl., 619.

The obvious and reasonable distinction between a lease for a short term and an absolute and final abandonment of the chartered undertaking by a sale is founded in wisdom. This court ought to give recognition and force to such distinction. An independent inquiry for the correct principle; a discriminating analysis of adjudicated cases; a determination to make the law sufficiently flexible to meet the varied demands of modern business and corporate usefulness; the intelligent pursuit of the substance rather than the shadow, support the right of a private corporation to escape by a short lease the continuance of a business temporarily unprofitable or an involuntary sacrifice of its property by forced sale. Law ought to furnish no exception to the general spirit of progress, but rather the highest and most advanced form of its manifestation. And where the necessities of pro-

53

gressive business demand a course, the law should blaze a path.

The second proposition which will doubtless be presented and which we anticipate, is that the board of directors chosen at the meeting of April 24th, 1905, was illegal because the notice to the stockholders did not apprise them of the election of the board of directors and because the charter required a board of five directors when only three were chosen.

Counsel for the appellees contend that the trial court erred in not holding that the pretended proceedings attempted to be taken at the special stockholders' meeting of April 24th, 1905, are illegal and void; also in not holding and deciding that the pretended proceedings had at a subsequent special meeting of the board of directors are illegal and void.

It is important at the very outset of a discussion of these matters to bear in mind that the plaintiffs, appellees herein, Andersons, were present at all of the meetings in which any action was taken upon the matter of executing the lease in controversy. The appellees by attending and participating in a meeting waived the failure of the notice to apprise them of the purpose of the meeting.

Kenton Furnace, etc., Railway Co., vs. McAlpin, 5 Fed. 737.
Walworth v. Brackett, 98 Mass., 98.
Baintree, etc. v. Baintree, 146 Mass., 482, 16 N. E., 420.
Nelson v. Hubbard, 96 Ala., 238, 11 So., 433.
26 Am. & Eng. Enc. of Law (2nd Ed.), 989, and citations.

In the fourth subdivision of the *syllabi*, 5 Fed., *supra*, it is said:

"The notice of the meeting of the stockholders prescribed by the charter or by-laws of the corporation may be waived by the stockholders; and if each stockholder attends and participates in the action of the meeting, they are estopped from denying the legality of the notice."

All stockholders who did not attend, signed a written confirmation of the action of the stockholders and directors, and substantially ratified the same. (See printed record, pp. 180 and 181.) And as conclusive of this question, the stockholders at their meeting on May 1st, 1905, and the directors at their annual meeting on the same date, ratified and approved the leasing and the action of their officers in this matter. (See printed record, p. 206.)

Appellees, plaintiffs below, also contend that the charter requiring a board of directors composed of five members, the election of three was invalid, and that no action of the three so elected could bind the corporation, and also contend that the corporation can only act through its board of directors. But the trial court having found that the election was in good faith on the part of the majority, though under a misapprehension of the requirements of the charter caused by a telegram from the secretary of the territory, that such three members would be valid and legal members of the board of directors, and that they, constituting a quorum of the five, could act in all matters affecting the corporation.

The American and English Encyclopaedia of Law states the rule as follows:

"Where, at an election held for a certain number of directors, and a smaller number are elected, the election is valid as to them, and, if constituting a quorum, may act as a board."

21 Am. & Eng. Enc. of Law, 845.
Schmidt vs. Mitchell, 98 Ky., 218.
Gilchrist vs. Collopy, 82 S. W., 1018, 26 Law Rep., 1003.
2 Kent Com., 293.
Sargent vs. Webster, 13 Metcalf (Mass.), 497.
Ex parte Willcocks, et al, 7 Cow, (N. Y.), 402.
People ex rel. Cock, et al. vs. Fleming, 13 N. Y. S., 715; 59 Hun, 518.

In the case of *Sargent vs. Webster, supra*, the Supreme Court of Massachusetts say, in the third subdivision of the *syllabi*:

"A majority of the directors constitute a quorum, and a majority of the quorum have authority to decide any question upon which they can act."

The statute is clear that a majority of the directors constitutes a board, and when such board is in session, that a majority of such board may act.

An examination of *ex parte Willcocks, et al* and *People ex rel. Cock et al. vs. Fleming, supra*, will convince the court, from the force of their reasoning, that if an election is held for the election of a number of directors which is a majority of such board, such an election would

be valid in all cases, though at first, the earlier courts doubted whether the election of a less number than a quorum would be legal. But the rule is now generally accepted that the election of any number is valid, but that they cannot act for the corporation unless they constitute a quorum.

In the case of *Smith vs. Mitchell, supra*, it is stated:

"At an election of directors the full number was not elected, because of the ineligibility of the candidates voted for, the old board did not hold over, but those who were duly elected, constituted the governing body, with power to fill the vacancy."

In the New York case, *People vs. Fleming, supra*, the opinion is long and the argument is scattered, but an examination of it and the authorities cited, fully sustains our position.

In the case of *Vanderburg vs. Railroad Company*, 29 Hun, 348, it was held that any number of persons who might receive a majority of the lawful votes were elected, although there was a failure to elect the full board required by law.

In the *Matter of the Union Insurance Company*, 22 Hun. (N. Y.), 590, the Supreme Court of New York, upon full consideration of the question, in a well considered case, hold, that when a majority of a board is elected, it terminates the tenure of office of the old board, and such majority may act for the corporation.

People ex rel. Platner vs. Jones, 17 Wend., 81.
In re Excelsior Insurance Co., 38 Barb., 297.

Penobscot R. R. vs. Dunn, 39 Me., 587.
Wright vs. Commonwealth, 109 Pa. St., 561, 1 Atl., 794.

The Supreme Court of Pennsylvania in the case of *Wright vs. Commonwealth, supra*, sustain the contention of the appellants that the election of a less than a full board would be valid, and conclude with the following statement:

"I have been unable to find a single authority which sustains the position of the plaintiff in error."

In the case of *In re Excelsior Insurance Company*, 38 Barb. (N. Y.), 297, the court applied this rule under circumstances very similar to the case at bar. The Excelsior Insurance Company was incorporated under the general laws of the state of New York. Its charter provided:

"That the rights, powers and privileges now or hereafter conferred by law upon the company are vested in and shall be exercised by a board of directors consisting of forty persons."

A later act of the legislature authorized the reduction of the board of directors to twenty-one members. At an election held after the passage of this amending act only twenty-one directors were elected by the stockholders, it being assumed erroneously by the stockholders that the legislative act itself reduced the board to twenty-one. A petition was then filed for a new election

on the grounds that no action had been taken to reduce the board of directors as authorized by the amending act and therefore the election was wholly void. The Supreme Court refused the relief for the reason that the twenty-one persons so elected were legal directors, and that the failure to elect forty created a vacancy of only nineteen, and that the action of the stockholders in electing only twenty-one, by mistake, was regular, and said twenty-one constituted a quorum and were authorized to transact business for the corporation.

That a majority of a quorum of the board of directors may effectually bind the corporation, we believe under the law there can be no doubt. The concluding portion of section 957 of the 1893 Statutes of Oklahoma, section 969 of the Wilson's Annotated Statutes, provides:

"A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of the majority of the directors forming such board, made when duly assembled, is valid as a corporate act."

That is, a majority of the board constitutes a quorum, and every decision of the majority of such quorum is valid as a corporate act. The Supreme Court of California has passed upon this statute, and expressly held that a majority of a quorum may effectually bind the corporation.

Smith vs. Los Angeles Immigration Co., 78 Cal., 289, 20 Pac., 677, 12 Am. St. Rep., 53.

The Supreme Court of Iowa in the case of *Buell vs. Buckingham & Co.*, 16 Iowa, 284, in an interesting case, states the rule as follows:

"The majority of a quorum of the board of directors of a corporation at a meeting at which a quorum is present may bind the corporation."

This rule as stated in the Iowa case has been adopted in the following cases:

Wadhams vs. Litchfield, etc., Turnpike Co., 10 Conn., 416.
Adams vs. Hill, 16 Me., 215.
Damon vs. Granby, 2 Pick., 345.
Cahill vs. Kalamazoo Mutual Insurance Co., 2 Douglas (Mich.), 124, 43 Am. Dec., 453.
Foster vs. Mullanphy Planing Mill Co., 92 Mo., 79, 4 S. W., 260.
Keyser vs. Sunapee District No. 8., 35 N. H., 477.
Wells vs. Rahway White Rubber Co., 19 N. J. E., 402.
Booker vs. Young, 12 Gratt., 303.
Rex vs. Miller, 6 Tr. Reps., 268, 3 Revised Reports, 172.
Martin, et al. vs. Chute, (Minn.) 24 N. W., 353.

CONCLUSION.

In conclusion we believe that the Supreme Court of the Territory was in error in holding that the contract of lease was against public policy, and believe that the other errors assigned in the Supreme Court of the Ter-

ritory by counsel representing the appellees herein are untenable, and that the decision of the Supreme Court of the Territory ought to be vacated and reversed, and the judgment of the District Court of Pottawatomie County, Oklahoma, ought to be affirmed.

Respectfully submitted,

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B. B. BLAKENEY,

Attorneys for Appellants.

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

THE SHAWNEE COMPRESS COMPANY, THE GULF COMPRESS COMPANY, T. F. STUBBS, et al.,
Appellants,

vs.

NEIL P. ANDERSON, B. L. ANDERSON, MORRIS E. BURNEY, co-partners as Neil P. Anderson & Company, and F. E. ANDERSON, M. D. ANDERSON and W. L. CLAYTON, co-partners as Anderson-Clayton & Co.,
Appellees.

No. 140.

REPLY BRIEF OF APPELLANTS.

B. B. BLAKENEY,
Of Counsel for Appellants.

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In our original brief we fully state the facts which we regarded as controlling in the disposition of the cause, and the appellees find but little objection to our statement. The facts were found by the trial court in favor of appellants and the Supreme Court of the territory reversed the decision of the trial court upon the one finding, that the contract of lease was contrary to public policy, and therefore invalid. The facts developed at the trial of the cause

are not in main contradictory, but the inference or conclusion to be deduced from admitted facts was the question of difficulty and division. The Territorial Supreme Court reached the conclusion that the trial court was in error in holding the contract valid under, what we term, the fourth objection urged to the lease in appellees' amended petition, and reversed the judgment with direction to enter judgment for the appellees because it concluded the contract was unlawful.

ARGUMENT.

Appellees in their amended petition and at the trial, presented four issues:

1. That the meeting at which the directors were elected was irregularly called, an insufficient number of directors was elected at a time when there were no vacancies in the board, and the action of such board in authorizing the execution of the lease was invalid.

2. That the Board of Directors, or a majority of the stockholders, under the charter of the Shawnee Company, had no power over the objections of the minority stockholders to sell, lease or otherwise dispose of the entire property of the corporation, even by a lease for the period of five years, whether or not the pressing indebtedness of the corporation threatened the forced sale and sacrifice of its property, but that the corporation must wind up its business and surrender its charter under the provisions of the law for the dissolution of corporations.

3. That the majority of stockholders and directors caused the lease to be executed to advance their personal interests, and not in the interest of the corporation.

4. That the Gulf Compress Company in its operation and method of conducting business is a trust, combination and conspiracy in restraint of trade in violation

of the Federal anti-trust laws and the anti-trust laws of Oklahoma, and that said lease was procured in furtherance of such unlawful contract, combination and conspiracy.

I.

It is true that the notice of the stockholders' meeting called for the 24th of April, 1905, did not disclose the business which would be performed at such meeting. A copy of such notice is found as Exhibit "A" attached to the plaintiff's petition (Record, page 14).

At the meeting held on April 24th, 1905, the stock of the appellees was represented (Exhibit "B," Record, page 14). On the books of this corporation this stock appears in the name of Neil P. Anderson & Co. as a partnership, and Anderson-Clayton & Co. as a partnership, and B. L. Anderson was one of the partners in the Neil P. Anderson & Co., and F. E. Anderson was one of the partners in the Anderson-Clayton & Co. (Record, pages 10 and 11). These parties attended the meeting, representing their respective partnerships, and participated in the business at that meeting. They did not act for their respective partnerships under proxies, but acted as members of their respective firms (Record, page 48). At this meeting three directors were elected, to-wit: F. E. Anderson, T. F. Stubbs and W. H. Beatty, and immediately after the adjournment of the stockholders' meeting this Board of Directors met and organized by electing T. F. Stubbs president, F. E. Anderson vice-president and W.

H. Beatty secretary and treasurer. On April 26th, 1905, a meeting of the Board of Directors was attempted to be held, which only Beatty and Stubbs attended, but on this day T. F. Stubbs as president and W. H. Beatty as secretary gave notice in writing to each of the directors that a meeting of the Board of Directors of the Shawnee Compress Company would be held on the 1st day of May, 1905 (Exhibit "E," Record, page 17). On the 1st day of May, 1905, at the time and place designated in the notice, and under the by-laws, the Board of Directors convened, there being present T. F. Stubbs, W. H. Beatty and F. E. Anderson, at which the minutes of the preceding meetings of April 24th and of April 26th, 1905, were read and approved by a majority vote, W. H. Beatty and T. F. Stubbs voting in the affirmative, and F. E. Anderson voting in the negative (Exhibit "H," Record, page 22). At this meeting a resolution was presented, authorizing the lease in controversy, and carried by a majority vote; W. H. Beatty and T. F. Stubbs voting for the same, and F. E. Anderson being present but not voting. These last minutes above referred to will be found on pages 22, 23 and 24 of the printed record.

This lease was specifically authorized by the stockholders at a meeting on April 24th, in which appellees participated (Record, page 15).

Counsels for appellees contend that these meetings were irregular. First, because the notice given of the same did not apprise the members of the nature and character of the business intended to be done at the meetings. Second, that the charter required five directors to be

elected, and the election of three would be invalid, and, third, that there were no vacancies in the Board of Directors, and any election was invalid.

We have shown in our original brief, on page 54, that the appellees, being present and participating in these meetings, waived failure of the notice to apprise them of the purpose of the meetings. Counsel for appellees, to escape this, contend that the partnerships were represented by proxies. The rule is that where stock is owned by and registered in the name of the partnership, it may be voted by any of the partners.

26th Am. & Eng. Enc. of Law, 1001.
Kenton Furn. R. & N. Co. vs. McAlpin, 5 Fed., 737.
Allen vs. Hill, 16 Cal., 113.

In *Kenton Fur. R. & N. Co. vs. McAlpin, supra*, in the 6th subdivision of the syllabus, it is said:

"One partner of a firm, which owns stock in a corporation as a part of its assets acquired in its regular business, has the power to represent that stock in all matters which relate to it in the usual management of such firm's business, and his action binds the firm; thus, he may receive and waive notice of stockholders' meetings, vote at such meetings, etc."

In the opinion in this last case, Swing, district judge, in charging the jury, at pages 747 and 748 of the 5th Fed., uses the following language:

"You will bear in mind that two of these subscriptions of stock stand in the name of companies—Damarin & Co. and Bell & Co., representing two portions of these

certificates of stock; and it is said by the plaintiff that the action of the meeting was invalid, even if it were lawful without the notice, for the reason that all of the parties owning stock, or to be affected by such action, were not present. It is not claimed by anybody that all of the members composing the firm of Damarin & Co. were at the meeting, nor is it claimed by anybody that all of the members composing the firm of R. Bell & Co. were at the meeting; and if the separate members of these two firms, in this transaction, are to be treated as separate and distinct owners of an aliquot part of the stock, which existed in their name, as a matter of course, the meeting would not be binding, because all the parties were not there to participate.

"This leads us to consider whether it was necessary for each one of the members composing these two firms to be there and participate in the deliberations of that meeting in order to make it binding upon the firms. It is admitted that one of the members of the firm of Damarin & Co. was at the meeting. It is a general proposition of law that the act of one partner in and about the business of a firm is binding upon each and every member of that firm, and it is another general proposition of law that notice to one of the partners in relation to matters which are connected with the business of the firm is notice to all of them. I say to you that one partner of a firm, which may own stock in a corporation as a part of the assets of the firm which they have acquired in the regular business of the firm, has the power to represent that stock in all matters which relate to the stock in the usual management of the business of the firm of which he is a member. About this proposition there can be no doubt, and it is wholly unnecessary for me to refer to authorities upon the question.

"And so with the question of notice. If notice is given to one of the partners of a firm of that which is to occur in relation to the business of the firm in its legitimate or ordinary business transactions, that is notice to

all the members of the firm, and they are bound by it. And so one member of the firm, if he has power to act in regard to the meetings of this corporation, and to act for his firm in the meetings, has the power to waive the necessity of the notice to the other members of the firm, and if he attends and takes part in the meetings of this corporation, and joins in the resolutions and acts of the corporation, the other members of the firm are estopped from denying that they had no individual notice of this meeting, or what was to be done at it."

It is conceded that the charter of the corporation required five directors, and only three were elected. At a previous meeting there had been nine directors elected by the stockholders of the Shawnee Company (Record, pages 116 and 117). They were J. M. Aydelotte, W. H. Beatty, C. J. Benson, A. E. Nelson, F. E. Anderson, J. E. Portis, T. F. Stubbs and H. T. Douglas. Only five of this board, of course, was valid and legal directors. Which five of the board is valid? J. M. Aydelotte was elected president and W. H. Beatty secretary, and under the laws of Oklahoma the president and secretary must be directors; therefore, the corporation would be estopped from denying that its president and secretary were not directors. The by-laws of this corporation provide (Sec. 8, page 200, of the Record), that the Board of Directors should select three of their own number as an executive committee, and the executive committee selected were W. H. Beatty, A. E. Nelson and F. E. Anderson. F. E. Anderson was also a member of this board, because he had been selected as vice-president of the corporation, and only a stockholder, under the statutes of Oklahoma,

can be a vice-president. H. T. Douglas was recognized by the directors and by the corporation as a director, and was elected treasurer of the corporation.

It also appears from the record that the executive committee acted as such committee during the years of 1904 and 1905. By fair construction it seems that the five legal directors then of this corporation were J. M. Aydelotte, its president; W. H. Beatty, its secretary; F. E. Anderson, its vice-president; H. T. Douglas, its treasurer, and A. E. Nelson, a member of its executive committee. If that be true, Beatty and Anderson were members of the board of directors, independent of the meeting held on April 24th, at which J. M. Aydelotte resigned as the president of the corporation, because he had ceased to be a stockholder in this corporation, and T. F. Stubbs was elected as a director and as president of the corporation. Then T. F. Stubbs, W. H. Beatty, H. T. Douglas, A. E. Nelson and F. E. Anderson would have continued as directors of this corporation. But it appears from the examination of the record that Nelson had assigned all of his stock to Stubbs and Beatty (Record, pages 97 and 128), and had ceased to be a stockholder in said corporation, and under the provisions of section 968, page 340, of the Revised and Annotated Statutes, 1903, of Oklahoma, A. E. Nelson could not be a director of this corporation. There was to that extent a vacancy in the Board of Directors. Who was the fifth member of this board? It could not have been either C. J. Benson or J. E. Portis. C. J. Benson was present and participated in the action of the stockholders in reducing

the Board of Directors to three, and voted for the election of the new directors, and would be concluded by so acting (see Record, page 15). J. E. Portis expressly consented to the reduction to three and to the validity of the election (Record, page 180).

However, if not so concluded, Benson refused after the election of the new board to longer act as a director of the corporation (see Record, bottom of page 145). Portis and Douglas filed a written waiver of the meeting and a confirmation of the action of the stockholders in electing a new Board of Directors, and their full consent to the same (see Exhibit "12," page 279). It is clear from this record, as found by the trial court, that the Board of Directors consisted, after the election of April 24th, of T. F. Stubbs, W. H. Beatty and F. E. Anderson, and that no other members of said corporation claimed to be or were recognized by the corporation as directors of the corporation.

Sec. 1 of the by-laws, page 200 of the Record, expressly provides that the management of the affairs of this corporation shall be vested in a Board of Directors, *who at all times shall be stockholders of the corporation;* thus when Aydelotte and Nelson ceased to hold stock, they forfeited their offices as directors, and there was a vacancy of these two members, and it is immaterial whether or not Douglas continued as a director of the corporation. The election of T. F. Stubbs as such director, and his recognition by the Board of Directors by electing him president of the corporation, would make

him a legal director, and with Beatty and Anderson would constitute the majority of the board.

We have shown in our original brief, commencing on page 55, that the majority of the directors, constituting a quorum, might act for and bind the corporation. It also appears from the evidence that Benson, whether or not a director, was selected with Beatty and Anderson as a committee to confer with the Gulf Compress Company, and was authorized to enter into the lease, and did attempt to execute such lease, and in all things fully ratified the act of the board of directors. (See record, page 23). In addition to this, the action of the board was approved at the annual meeting of the stockholders held on the 20th day of June, 1905. If the majority stockholders, in good faith, however, believed that the board under the law, should consist of only three directors, and attempted to elect a legal board, and the same was recognized by all the stockholders as a legal board, such three would be legal directors, and if a quorum, could bind the corporation. Anderson voted for the reduction of the number of directors and for the election of the three new directors. The reduction was carried unanimously. (Record, page 16). And this election was approved at the annual meeting. (Record page 93). (The reference on page 93 to meeting held on October 26th is a typographical error, meaning obviously, April 26th).

In the resolution itself reducing the board of directors from nine to three, (Record, page 15), it was stated, "That in order to comply with the charter and

articles of incorporation," that three members should be elected. In a telegram from Wm. Grimes, secretary of the territory, to C. J. Benson, (Record, page 183), it was stated that "the articles of incorporation Shawnee Compress Company call for three directors." Therefore, the stockholders acted in good faith in electing the three directors and such directors could bind the corporation as shown in our original brief, page 55.

It appears that the annual meeting of the stockholders held on the 6th of June was adjourned to June 20th. We offered in evidence the minutes of the stockholders' meeting held on June 6th, found in the corporation minute book on page 58, and the minutes of the meeting of June 20th found on page 60 of said book. (See Record, page 145). The minutes of the annual meeting held on June 6th are incorporated in the record on page 207, but the minutes of the adjourned meeting of June 20th are not in the record. We believe that it would be but fair to ask this court to presume in the absence of part of the evidence that there was sufficient evidence offered to justify the trial court in finding that the action of the directors was ratified and confirmed at the annual meeting in its adjourned session held on June 20, 1905.

II.

Appellees' second objection to the validity of the lease, was that by executing the lease of all of its property for the period of five years, the Shawnee Company

abandoned its chartered purposes, and that the lease was therefore invalid.

Counsels for appellees, in their brief in this court, have argued that the record discloses that the Shawnee Company was not indebted, that there was no necessity existing for the execution of the lease. The trial court found from the great mass of evidence offered that the financial condition of the Shawnee Company justified the execution of the lease, and this finding was expressly affirmed by the Supreme Court of the Territory in the first subdivision of the syllabus, and in the opinion found on page 219 of the record. It was proven beyond controversy that $6000.00 was owing to a local bank, secured by a second mortgage, and $11,000 was owing to the Webb Compress Company Ltd., secured by a first mortgage, on all the property of the company; that the company had no money; that its property had been offered for sale for taxes and employes had garnisheed the banks to recover their salaries. It is so patent that the company could not protect itself against the indebtedness to the local bank without the execution of the lease, that it seems unnecessary to enter into a discussion of the other facts in the case.

At the trial of the case the Andersons claimed that they were willing to advance moneys to take up the indebtedness of the company, but admitted that they had never made any proposition of that character at any of the meetings of the board of directors or stockholders when ways and means were being discussed, and it was so clearly an afterthought occurring to them at

the trial, that the court disregarded such claim and sustained the lease. When a private corporation is indebted and its property is threatened to be taken in satisfaction of such indebtedness, and the corporation is unable to protect itself, it may either sell its property entirely or enter into a lease for the purpose of procuring the means to meet its urgent demands. We believe that this is a universal rule in this country and in England. No case has been cited to the contrary.

Counsels for the appellees in their brief, on page 52, *et seq.*, contended that because an increase of the stock had been issued on the 10th day of June, 1901, to its stockholders, under the agreement that such new stock should be divided or apportioned pro rata among the stockholders according to the amount of stock held by each, without any consideration being paid for such additional stock, that the corporation could recover against such stockholders, their unpaid subscriptions, and thereby obtain moneys for the continuation of its business.

The assertion that no consideration was paid for the increase of stock is a mere presumption of counsels. But if admitted to be true, we do not see how that could affect the situation in which the company was on the 24th day of April, 1905. The only one of the stockholders to whom this stock had been issued without payment, if so issued, who was then a member of the company, was C. J. Benson, and if they could have recovered the $3500.00 against him for his thirty-five shares, it

would not have met the demands of the corporation. But there is another reason that seems to us conclusive upon this false premise, and that is, in April, 1905, any right of action against any of the stockholders to recover for stock which had been issued, but had not been paid for, was barred by the statutes of limitation. The corporation issued its stock showing that the same was fully paid up, and this stock came into the hands of the appellees and of Beatty and Stubbs with such recital on the face of the stock. (Record, page 122). The corporation would be concluded by the recital of the stock and be estopped against purchasers from asserting that the stock was not fully paid up. Counsels for appellees, after presenting with apparent seriousness this position, cite the case of *Parsons vs. Tacoma Smelting Co.*, 65 Pac., 795, 25 Washington, 492. The Washington case is entirely inapplicable because in that case, its appearing that the stockholders had only paid a portion of their subscriptions and were themselves indebted to the corporation, the court properly held that if the stockholders were required to pay up their stock, that the corporation would have sufficient funds to carry on its business. But it certainly cannot be seriously contended that the purchasers of the stock in the Shawnee Company could be required to pay an assessment on stock which on its face showed that it was non-assessable and fully paid up, because some prior owner had not fully paid the corporation the par value of same. And if so, like any other

obligation, not being in writing, would be barred at the expiration of three years under the Oklahoma statutes.

Rochester & K. F. Land Co. vs. Rover, 7 App. div. 366, 40 N. Y. Sup. 72.

We believe from the evidence that it is unfair to assume that because the stock was to be issued to the members that it was to be issued without their paying any consideration therefor, and the burden of proving such condition is certainly upon the appellees.

III.

Counsels for appellees insist that the contract of lease was void as to the non-assenting stockholders for the reason that same was not executed by the parties assuming to represent the Shawnee Company as its managing officers, for the best interests of the said company, but to advance their own personal interests.

The finding of the trial court is sustained by the preponderance of evidence, and we believe that this court would not reverse such finding, but if so, we call attention to the fact that the record does not contain all the evidence offered upon this question. The omission of the minutes of the annual meeting of stockholders is the omission of important evidence upon this question. If the stockholders at the annual meeting ratified and approved the lease in controversy, it would become binding upon the corporation whether its execution was regular or not.

IV.

The fourth objection presented in the amended petition of the appellees, and the one on which the judgment of the Supreme Court of the Territory is sought to be affirmed, is that the contract of lease is contrary to public policy and void. The appellees stated in their amended petition substantially this objection in the following language: (Page 31 of Record).

"That said Gulf Compress Company is in its operation and method of conducting business, a trust, combination and conspiracy in restraint of trade and commerce in violation of the federal anti-trust laws and the anti-trust laws of the Territory of Oklahoma."

It was not urged in this petition that any *provision of the lease* was in the *unreasonable* restraint of trade and invalid. The petition was therefore drafted upon the theory that the Gulf Compress Company was itself a combination of capital organized for the purpose of establishing a monopoly in the compressing of cotton, which was prohibited by the Act of Congress 26th Statutes at large, 209 Chap. 647, and by the anti-trust statutes of Oklahoma. Appellees did not in either of the lower courts, and have not in this court, contended that the anti-trust laws of Oklahoma affect this contract of lease, or that the Gulf Compress Company was a combination prohibited by the territorial laws.

The Supreme Court of the territory held that the Gulf Compress Company as conducted, was unlawful and against public policy, its operation tending to the

unreasonable restraint of trade, the prevention of competition and the establishment of a monopoly, and counsels for appellees, (page 15 of their brief), say, in effect, that the Supreme Court of Oklahoma Territory held that the contract of lease from the Shawnee Compress Company to the Gulf Compress Company tends to create a combination *unreasonable* in restraint of trade, etc. This is an admission that the contract of lease was assailed in the amended petition for one reason and held invalid in the Supreme Court of the territory for another.

A contract in restraint of trade is invalid for one of two reasons:

1. That it intervenes the provisions of the statutory law, as is claimed in this case, its provisions are prohibited by the Act of Congress of July 2, 1890.

2. That it is an unreasonable restraint of trade and prohibited by the course of the common law.

It is our contention that the Supreme Court of Oklahoma Territory did not intend to, and did not, hold the contract in controversy void, because it transgressed the provisions of the Sherman act. This is clear for five reasons:

1. No reference is made in the decision to the Sherman Act.

2. No reference is made in the decision to the many well considered decisions of this court construing this act.

3. That the invalidity of the contract is asserted because it is in *unreasonable* restraint of trade.

4. Because the contract is not affected by the Sherman Act.

5. Because the court applies the rule in the case of *Navigation Co. vs. Winsor*, 20 Wallace, 64-68, which was decided prior to the Sherman Act.

Of course this court will examine this question originally without reference to the decision of the Supreme Court of the territory, but a proper comprehension of the facts can best be acquired from an analysis of the decision below.

It seems improbable that the Territorial Court should have held not only that this contract was invalid, but by one blow have stricken down the business and destroyed the properties of two great industrial corporations because their business was prohibited by an act of Congress, and nowhere have referred to any terms of such act violated. It is equally improbable that it should have had in mind the Federal Anti-trust Act, and in an elaborate discussion of the circumstances surrounding such contract and the scope of the business of the Gulf Company, have nowhere referred to the many well considered cases construing this act by this Court. No question of modern times has demanded and received the attention of the court more difficult of solution, than the proper construction of the Act of Congress, 26 Stat. at Large 209, Chap. 647. The construction of sections one and three is necessarily the same. The first section applies to interstate trade and commerce, and the third

section being in the same language except that it applies to trade and commerce within the territories or District of Columbia. Therefore, the decisions of this court construing section one are controlling as to the construction of section three. The Territorial Court in disregarding this construction by this court in effect held that the Sherman Act as construed by this court could not be applied to the case at bar or the contract involved.

It is also clear that the Territorial Court did not apply the Sherman Act, because in the second and third sub-divisions of the syllabus the court in the holding provisions say:

2. "That such corporation, the Gulf Compress Company so conducted, is unlawful and against public policy, its operation tending to the *unreasonable* restraint of trade, the prevention of competition, and the establishment of a monopoly."

3. "That the execution of such lease will be perpetually enjoined, or if executed, the contract will be declared an *unreasonable* restrain of trade, and therefore void on the grounds of public policy."

Counsels for appellees concede in their brief, page 16, that the reasonableness of a contract does not make it valid under the Sherman Act, and thereby impliedly admit that the Supreme Court of Oklahoma by measuring it by the standard of reasonableness did not construe it with reference to the Sherman Act.

No question is better settled by this court than that a contract which *directly* intervenes the provision of the

Sherman Act is void without reference to it being reasonable or unreasonable. In the syllabus in the case, *United States vs. Freight Assn.*, 166 U. S., 240, the court says:

"The prohibitory provisions of the said act of July 2, 1890, apply to all contracts in restraint of interstate or foreign trade or commerce without exception or limitation; and are not confined to those in which the *constraint is unreasonable.*" This principle was expressly affirmed in the Joint Traffic Association case, 171 U. S. 505, and in the Northern Securities case in 193 U. S. 197. Justice Harlan states in the syllabus and also in the opinion in the last cited case.

"That the act is not limited to restraints of interstate and international trade or commerce that are unreasonable but embrace all direct restraint, reasonable or unreasonable."

Therefore it seems clear that by measuring the contract of lease in question by its reasonableness and denouncing it because found unreasonable, the Supreme Court of the Territory did not intend to test it by the act of July 2, 1890, known as the Sherman Act.

It is also clear that the lease contract is not affected by the Sherman Act and it is fair to assume that the Territorial Court so regarded it.

The lease in question had two clauses which the Territorial Court considered too restrictive.

Clause 6 (page 19, record): "The landlord shall not, during the term of this lease, without the consent of the tenant, directly or indirectly engage in the compression of cotton within fifty miles of any plant operated by the tenant."

And clause 10 (Record, page 20): "* * * The landlord agrees and pledges the tenant its good will, moral and real support, and that it, individually and collectively, will render the tenant every assistance in discouraging unreasonable and unnecessary competition."

Discussing these clauses, counsels for appellees on page 26 of brief say in substance that the Gulf Company would "very naturally term any and all competition therewith unreasonable and unnecessary." Now admitting this construction and this far-fetched inference, these terms obligate the Shawnee Company not to compete, during the life of the lease, with the Gulf Company within fifty miles of any plant operated by the Gulf Company and to assist in discouraging all other competition with the Shawnee plant. Even if this be the contract, is it affected by the Sherman Act? We think not. The primary purpose of this contract was the *leasing* to the Gulf Company the compress plant at Shawnee. The restrictive clauses were merely *ancillary*. The restriction was not the main direct purpose, but a collateral agreement. Such restrictive provision has always been regarded collateral to a contract of sale or leasing. A verbal agreement not to compete with the purchaser or lessee has uniformly been held not to vary the written contract of leasing or of sale because collateral.

Wely vs. Rhodins, 87 Ind., 1.

In *Wely vs. Rhodins*, the Supreme Court of Indiana had under consideration the question whether parol evidence would be received to establish an agreement to re-

tire from business when the contract of lease was in writing, and whether such verbal agreement varied in any respects the written contract. The court said: "The written lease seems to be as the parties intended to make; and the alleged parol agreement is so far separate that either may be enforced without effect upon the other. The parol agreement is *collateral* to the main agreement and does not vary it."

This court have always held this character of contracts valid.

Prior to Sherman Act:

Oregon Navigation Co. vs. Winsor, 20 Wall., 64.
Gibbs vs. Gas Co., 130 U. S., 396.
Fowle vs. Park, 131 U. S., 88.
Chicago, St. Louis Ry Co., vs. Pullman Co., 139 U. S., 79.

Under the Sherman Act:

United States vs. Trans-Missouri Ft. Assn., 166 U. S., 290.
United States vs. Joint Traffic Assn., 171 U. S., 505.
Bement & Sons vs. National Harrow Co., 186 U. S., 70.
Northern Securities Co. vs. U. S., 193 U. S., 197.
Cin. P. B. S. & P. P. Co. vs. Bay, 200 U. S., 179.

This court, and, we believe, every member of it, have held that a condition in a contract of sale restricting competition is not affected by the Federal Anti-trust law.

Justice Peckham in case of *United States vs. Joint Traffic Assn.*, 171 U. S., uses this language:

"We are not aware that it has ever been claimed that a lease or purchase by a farmer, manufacturer, or merchant of an additional farm, manufactory, or shop, or the withdrawal from business of any farmer, merchant or manufacturer, restrained commerce or trade within any legal definition of that term; and the sale of a good will of a business with an accompanying agreement not to engage in a similar business was instanced in the Trans-Missouri case *as a contract not within the meaning of the act*, and it was said that such contract was *collateral* to the main contract of sale and was entered into for the purpose of enhancing the price at which the vendor sells his business."

Justice Harlan, in the Northern Securities case, 193 U. S., stated the same principle as follows: "That the act is not limited to restraints of interstate and international trade or commerce that are unreasonable in their nature, but embraces all *direct* restraints imposed by any combination," etc. Justice Harlan cites the opinion of Justice Peckham in the Joint Traffic case, where the exception had been expressly stated.

Justice Brewer, concurring specially in the Northern Securities case, said that Congress did not intend to reach and destroy these minor contracts in partial restraint of trade which the long course of decisions at common law had affirmed were reasonable and ought to be upheld.

Justice Holmes, dissenting in this case, stated the same proposition in substance by declaring "That no

unison of property is a trust; a fusion of property by partners is not illegal though affecting competition."

Justice Day, who was of counsel for the government in the Northern Securities case, recognized this principle in the brief in which he joined. He says:

"The distinction between an actual *bona fide* sale and one which is merely nominal and really a cloak under which to accomplish a combination leads to confusion of language and thought."

Elsewhere in same brief he says:

"The government does not claim that ordinary corporations and partnerships formed in good faith in ordinary course of business come within the prohibitions of the act because *incidentally* they may to some extent restrict competition."

Justice Harlan had held, prior to the Northern Securities case, in the case of *Chicago, St. Louis Ry Co. vs. Pullman Co.*, 139 U. S., 79, that a condition restricting trade in a contract between the Railroad and Pullman Companies was valid.

But if there could be any doubt on this question after an examination of the Northern Securities case, it has been set at rest so far as this court is concerned in the case of *Cin. Packet Co. vs. Bay*, 200 U. S., in which Justice Holmes writes the opinion of the court, and which is concurred in by every member of the court.

Counsels for appellees, at page 31 of their brief, recognizing the controlling force of this case, attempt to avoid it by saying that the court did not have the restriction of interstate commerce before it and affirmed

it because no federal question was involved. But Justice Holmes expressly refused to affirm the case on that ground and says:

"But we do not like to put our decision upon technical reasoning where there is a fair surmise that such reasoning does not meet the realities of the case. We will suppose that the contract does not leave commerce between the states untouched."

Later he says:

"The withdrawal of the vendors from opposition for five years is the ordinary incident of the sale of a business and goodwill."

Then again:

"This being our view of the covenant in question, whatever differences of opinion there may have been with regard to the scope of the act of July 2, 1890, there has been no intimation from anyone, we believe, that such a contract, made as a part of the sale of a business, and not as a device to control commerce, would fall within the act. On the contrary, it has been suggested repeatedly that such a contract is not within the letter or spirit of the statute."

But the Territorial Supreme Court evince clearly that it held the contract invalid under the common law by taking and stating as the basis of its decision the case of *Oregon Navigation Co. vs. Winsor*, 20 Wall., 64, where the court say:

"It is a well-settled rule of law that an agreement in *general* restraint of trade is illegal and void, but an agreement which operates merely in *partial* restraint of trade is good provided it be not unreasonable and there

be a consideration to support it. In order that it may not be unreasonable, the restraint imposed must not be larger than is required for the necessary protection of the party with whom the contract is made."

Now, the next question for consideration, is whether this contract is void under this rule.

To be valid, it must be restricted to a *partial* restraint and not wider than the necessities of the lessee or purchaser requires.

IT WAS PARTIAL IN TWO RESPECTS.

1. It was limited in time to *the duration of the term of the lease*. The lease might be determined by the violation of several conditions thereof, but in no event could continue longer than *five years*. Therefore, in all events the restriction existed for a term not exceeding *five* years.

2. It was restricted as to place of operation. The Shawnee Company could operate at any place fifty miles removed from any plant of the Gulf Company. The Gulf Company had but two plants in the then territory of Oklahoma, which were within thirty-seven miles of each other, to-wit: At Shawnee and at Oklahoma City. It had no plant in Texas; had one in Arkansas at Little Rock, one in the Indian Territory, and one in Louisiana.

In the *Fowle vs. Park* case, 131, U. S., 88, Chief Justice Fuller held a contract valid that prohibited competition in the states of Ohio, Indiana, Illinois, Kentucky, Tennessee, Missouri, Michigan, Arkansas, Mississippi,

Alabama, Louisiana and all the territories lying west of those states together with certain counties in Virginia and Pennsylvania. This contract of lease was much more restricted than the contract construed in *Fowle vs. Park.*

The court must not overlook that clause 10 of the contract did not refer to any other *plant* of the Gulf Company, but referred solely to the one at Shawnee. In this clause the Shawnee Company obligated itself to discourage unreasonable and unnecessary competition referring exclusively to the Shawnee plant. This clause cannot be isolated without entirely destroying its purpose. The Shawnee Company desired that the Shawnee plant should be operated so as to build up its business in order that when it was redelivered at the expiration of the lease it would have a good business. This is the unquestionable construction of clause 10.

In the *Oregon Navigation Co. vs. Winsor,* 20 Wall., 68, this court expressly held the contract valid, though it embraced the whole of California.

In the *Cin. Packet Co. vs. Bay,* 200 U. S., 179, the court also held the contract valid when it embraced the whole of the Ohio river within the state of Ohio.

In *Booth vs. Davis,* 127 Fed., 875, affirmed by the Circuit Court of Appeals, 131 Fed., 31, it was held that a contract was valid where vendors agreed jointly and severally not to compete with purchaser in the territory in which the purchasers or their agents or employees *might operate.* Therefore, this contract, restricted in time and place, was only partial and valid.

The Cyclopedia states that this rule is the modern American rule, and only two states in the United States have held to the contrary. These states are Massachusetts and Indiana, and counsels for appellees cite the rule of these two courts, on page 21 of their brief. An examination of these cases shows, however, that the courts of those states do not go so far as counsels contend.

In *Bishop vs. Palmer*, 146 Mass., 469, cited by counsels for appellees, the court held that "a contract restricting competition *without any limitation of space*" was invalid. The court, however, holds in this case that such *general* restriction is *vicious*, which is contrary, as we will hereafter show, to the general rule as laid down by the courts of the states, and particularly as asserted by this court.

The Court of Indiana in *Consumers' Oil Co. vs. Nunnemaker*, 142 Ind., 560, also cited by counsels for appellees, expressly recognize the validity of a *partial* restraint, but hold the contract which it was considering so broad as to be equivalent to a *general* restriction and therefore invalid.

The case of *Western Wooden Ware Assn., vs. Starkey*, 84 Mich., 76, cited by counsels for appellees, is similar to the Indiana case. The restriction excluded the vendor from engaging in a like business in eight states, including Michigan where the factory was situated. The factory was sold, to be removed to another state, and any restriction within the state was of course unreasonable. The court say (page 83):

"The state has the welfare of all its citizens in keeping, and the public interest is the pole-star to all judicial inquiries.

"Here a large manufacturing business has been established and presumably it gave employment to quite a number of people. By the contract these people are thrown out of employment and deprived of a livelihood, and no other of the citizens of Michigan are called in to take their places. The business is no longer to be carried on here, but is removed out of the state."

The Court of Michigan cite many cases from that state showing that contracts in partial restraint are valid.

From a careful examination it is clear that the following is a correct *resume* from the decisions.

The Federal and State Courts uniformly hold that a contract in *partial* restraint of trade is valid and will be enforced.

The Federal and a majority of State Courts hold that the restrictive contract is valid though it embraces the whole of the state where the property sold or leased is situated, and other states.

A few states recognizing the boundaries of their state as an arbitrary limitation hold contracts excluding competition within the whole of the state as invalid, but this rule ignoring the wide area in which the goodwill of a business may extend is rejected by this court.

But if the contract is too comprehensive, may it not be divided and pruned of its illegal provisions and then enforced? If *divisible*, may not either of two rules be applied?

1. The whole restrictive clause be eliminated or disregarded if found invalid?

2. The restrictive clause divided and enforced within reasonable limits?

The Cyclopedia states the rule as follows (9 Cyc., 565):

"Where an agreement founded on a legal consideration contains several promises or a promise to do several things and some only of the things to be done are illegal, the promises which can be separated, or the promise so far as it can be separated, from the illegality, may be valid. The rule is that a lawful promise made for a lawful consideration is not invalid merely because an unlawful promise was made at the same time and for the same consideration. Thus if the terms of a contract in restraint of trade can be construed divisibly as to the limits, it may be valid as to the limits which are reasonable, although other limits imposed are excessive, unreasonable and void."

Rosenbaum vs. U. S. Credit System Co., 65 N. J. L., 255.
Fishell vs. Gray, 60 N. J. L., 5.
West. Union Tel. Co. vs. Bur. & S. W. Ry. Co., 11 Fed. 1, 3 McCrary, 130.
Dean vs. Emerson, 102 Mass., 480.
Thomas vs. Miles, 3 Ohio St., 274.
Lange vs. Werk, 2 Ohio St., 520.
Arnot vs. Pittson, 2 Hun., 591.

In *Rosenbaum vs. U. S. Credit System, supra*, the Court of New Jersey say, in the syllabus: "A covenant not to engage in a particular business will not invalidate the contract of which it is a part, if such contract has otherwise a legal consideration."

The *Western Union Telegraph Co. vs. Burlington & S. W. Ry. Co.*, in the Circuit Court of Iowa, decided by Circuit Judge McCrary in 1882, reported 11 Fed., page 1, is a very decisive case.

He said:

"It is not competent for a railroad company to grant to a telegraph company the exclusive right to establish lines of telegraph communication along its right of way, such contract being in restraint of trade and contrary to public policy.

"Where a contract in restraint of trade embraces several distinct promises and is divisible in its nature, the illegality of one provision which is capable of being construed divisibly will not necessarily make the entire contract null and void."

Not only could the whole provision be stricken out, if illegal, but the provision may be pruned of its illegal portions and the remainder enforced.

Navigation Co. vs. Winsor, 20 Wall., 64.
Cin. P. B. S. & P. P. Co. vs. Bay, 200 U. S., 179.
Beard vs. Dennis, 6 Ind., 200.
Pelty vs. Eichele, 62 Mo., 171.
Smith's Appeal, 113 Pa. Stat., 579.
U. S. vs. Bradley, 10 Pet., 343.
Wolsey vs. Miley, 62 Ill. App., 141.
Trenton Potteries Co. vs. Olyphant, 58 N. J. Eq., 507.

This contract could be divided so as to be valid at common law. It provided that the landlord should not compete with the tenant within fifty miles of any plant operated by tenant. It would be divisible and enforced

within fifty miles of the Shawnee plant, and the provisions with reference to other plants would be stricken out.

The lease is not *malum in se,* but invalid because it extended to too wide an area.

Malum in se is defined in Black's Law Dictionary as follows:

"Acts *malu in se,* are felonies or breaches of public duties, injuries to person or property, outrages upon public decency or good morals and breaches of official duties, when done wilfully and corruptly."

Justice Story in case of *United States vs. Bradley,* 10 Pet., 343, has given a lengthy discussion of the principle involved. He says in course of his opinion:

"There is no solid distinction in cases like the one before the court, between bonds and other deeds containing conditions, covenants or grants, not *malum in se,* but illegal at the common law; and those containing conditions, covenants and grants illegal by the express prohibitions of statutes. In each case the bond or other deeds are void, as to such conditions, covenants or grants, which are illegal; and are good as to all others which are legal and unexceptionable in their purport."

In *United States vs. Mora,* 97 U. S., 413, Justice Bradley says:

"But even if the first condition of the bond, which required the goods to be consumed in the Republic of Mexico, were not sustainable, the latter condition, which provided that no part of the goods should be transported to any place under insurrectionary control, and that none

of them should be used in any way, with the consent or allowance of the shippers or their agents, to give aid or comfort to parties in rebellion against the United States, is in exact conformity with the instructions, and is severable from the rest. On the authority of *United States, vs. Hodson*, 10 Wall, 395, and cases there relied on, the bond would be good *pro tanto*."

The Oklahoma statutes say (sec. 765 of Wilson, 1903, Revised Statutes):

"Where a contract has several distinct objects, of which one at least is lawful and one at least is unlawful in whole or in part, the contract is void as to the latter, *and valid as to the rest*."

But this contract was valid under the express language of the Oklahoma statutes, copies of which are set in our original brief on pages 27 and 28.

This is a California statute, and has been frequently construed by that court as itself dividing the contract and making the same valid as to the county where the business is located.

City Carpet Beating Works vs. Jones, 102 Cal. 506 is the strongest case. It was held that a contract there restricting competition within three counties was valid within the county where the business sold was situated, and invalid as to excess.

In *Meyers vs. Merillian*, 118, Cal. 353, in subdivision 5 of syllabus, the court said:

"An inhibition as to agency for others in a contract by one who has sold the good will of a business, engaging not to carry on a like business or to act as agent

in so doing, is within the provision of the Code permitting a contract in restraint of trade to go to the carrying on of a similar business in such case; and the language of the Code is to receive a reasonable construction so as to effect the end for which the legislature says such contract may be made and to give reasonable protection to him in whose favor such a contract is executed; and the Code provision as to the carying on of a similar business is not to be limited to the carrying of it on as owner or proprietor but is equally inclusive of the conduct of it, wholly or in part as the agent of another."

In case *Merchant Ad. Sign vs. Sterling*, 124 Cal. 429, the court said these two sections paraphrased would read:

"Every contract by which any one is restrained from exercising a lawful business is to that extent void except where he has sold the goodwill of the business, in which case, as to that or similar business he may agree not to engage so long as buyer carries on like business within the specified limits."

It will be seen that no part of the contract would be invalid except the part restricting competition and if the provision in restraint was without the statute the whole might be stricken out and the contract otherwise would be valid.

South Dakota with the same statute has given it the same construction.

Prescott vs. Bidwell, 18 So. Dak., 64.

The Court below and appellees' counsels find objection to the expression to "individually and collectively to discourage unreasonable and unnecessary competition." This of course means that the Shawnee Company will not

alone, or associated with others, compete or encourage others to compete. No stockholder signed the contract individually, so it did not obligate the stockholders.

Streichen vs. Fehleisen, 112 Ia., 49.
Booth vs. Davis, 127 Fed. 875.

In a letter written by Mr. Hanson, President of the Gulf Compress Company, to the Secretary of the Shawnee Company prior to the making of the lease, he says (page 197, Record):

"Our getting together on a lease proposition means the avoiding for each other directly or indirectly of the possibility if not the probability, of unnecessary competition." Much offense is taken by the appellees to this expression. The most that could be said of it is that he wanted to acquire the Shawnee Compress to avoid competition. This is lawful.

Booth vs. Davis, 127 Fed. 875.
State vs. Shippers Compress Co., 95 Tex. 603.
State vs. Shippers Compress Co., 67 S. W., 1049.
Trenton Potteries Co. vs. Olyphant, 58 N. J. Eq., 507.
Diamond Match Co. vs. Roeber, 106 N. Y. 473.
Gamble vs. Queens Co. Water Co., 123 N. Y. 91.
Rafferty vs. Buffalo Gas Co., 37 App. Div. 618, 56 N. Y. Sup., 288.
Oakdale Mfg. Co. vs. Garst, 18 R. I., 484.

It is not material that the price of compressing was raised.

Booth vs. Davis, 127 Fed., 875.

Or, that other parties were obligated by similar conditions.

Booth vs. Seibold, 74 N. Y. Sup., 776.

Counsels for appellees cite *More vs. Bonnet*, 40 Cal., 251, which is shown in the later California case of *City Carpet Beating, Etc., Works, vs. Jones*, 102 Cal., 506, to have been decided before the adoption of the Code and is severely criticised by Eddy on Combinations, Vol. 2, Sec. 789, and disregarded when the same question was before this court by Justice Bradley in case of *Oregon Navigation Co. vs. Winsor*, 20 Wall., 64.

The Oklahoma case of *Hulen vs. Earel*, 73 Pac., 927, has no application because in that case the partner was trying to enforce by injunction the portion of the contract outside of the statute—trying to enforce the excess—and the court properly held it could not be done.

It is asserted that the Gulf Company did not agree to operate the plant. We insist that a fair construction of its contract did obligate the Gulf Company to operate the plant.

In subdivision one, page 18, Record, it is said:

"The landlord shall deliver to the tenant its compress property in *good operating condition*, that is, with the *necessary running repairs made for the operation* of the press for the season of 1905-'06."

3. "The tenant is to pay all expenses of *operating the property*," etc. * * * *Boiler insurance to be carried by the tenant.*

Why carry boiler insurance on a boiler not *used?*

Also, all of clause 4 contemplates the operation of plant.

But clause 10 not only requires operation but the operation in a manner to increase the business at Shawnee and make same a success, and to build up a market at Shawnee for cotton.

Mr. Hanson testified that the Gulf Company operated all its presses. (Rec., page 54).

There is certainly no force in the proposition that the Gulf Company did not compete with the Atlantic Compress Company. The Atlantic Company was an organization of railroads for the purpose of compressing their own cotton. We could no more compete with the carriers in this respect than we could if we had constructed car repair shops in towns where the carriers had their own repair shops and attempted to compete with them in the repairing business. The lease did not prohibit the Shawnee Company from competing with the Atlantic Company, if it saw fit. But no competition was possible with the Atlantic, and because the Gulf Company did not do the impossible or quixotic, it is unfair to draw the inference that we had combined with it in restraint of trade.

The fact that the Gulf Company had not paid in full its capital stock—or had treasury stock unissued if you desire to call it such—cannot affect its business. It had never exchanged any of its stock for properties or leases or used any of its stock to merge or combine with other companies. It sold its stock for cash and with it purchased or leased properties as it desired.

MONOPOLY.

Is the Gulf Company, in its method of operation, a monopoly?

The court will take judicial notice of the geographical position and location of cities, towns and railroads, and the general production of counties as shown by the census reports.

Harvey vs. Territory of Okla., 11 Okla., 156.
Encyc. of Evidence, 986, 943.
Maghee vs. Camden, 45 N. Y., 514, 524.
Railway vs. State, 72 Tex., 410.
Smith vs. N. Y. Cent., 43 Barb., 225.

We exhibit with our brief a map showing the locations of the presses of the Gulf Company in the two territories, now forming the State of Oklahoma. A full understanding can be obtained from examining this map, and the table on following page formed from the Bulletin No. 76, Census Reports for 1906. It must also be remembered that the cotton in the southwest drifts to the seaport towns of Galveston and New Orleans. Also that the railroads having cotton compressed will patronize compresses on their respective lines to earn all freight charges.

(See appendix).

In the Territory of Oklahoma in 1905, the year this lease was made, there was raised 305,322 bales of cotton and in the Indian Territory 328,549 bales, a total in the two territories of 633,871 bales. In the territory embraced within a radius of fifty miles of the Muskogee plant 100,671 bales, within fifty miles of the

Shawnee plant 173,736 bales, and within fifty miles of the Oklahoma City plant 176,264 bales. But it will be seen from the map that the Shawnee territory overlaps each of the other two. It appears from the evidence that the terminal rates are too heavy to permit cotton to be transferred from one railroad to another for compression. (Record, page 87). So, not more than 1-3 of the cotton around Shawnee can be compressed at Shawnee without extra charges in terminal transfers. There are six other compresses proven to be within the restrictive field or territory of these three compresses, viz.: Sapulpa, McAlester, Ada, Pauls Valley, Chickasha, El Reno and Guthrie. But independent of any competition the whole cotton accessible to these three points is 260,624 bales. Of this number 68,329 bales are grown in counties and districts where independent presses operate. Therefore, disregarding competition except in the counties where compresses are located, the total number of accessible bales is 192,289 to be divided between three plants.

The evidence discloses (Record, pages 95 and 96), that the total expense of operating the compress at Shawnee for 1904, was between $17,500 and $18,600. We will take $18,000 as the cost of operation. It would require 36,000 bales at fifty cents per bale to pay expenses. Under the terms of our lease, we were required to pay $6,000 rental per year. To earn $6,000 we would have to compress a sufficient number of bales to net this sum, above the additional expense of compression. The Interstate Commerce Commission gives the approximate net

profit per bale, which is cited on page 33 of our original brief, at 15 or 20 cents per bale. We will take the net profit at 15 cents per bale. To earn $6,000 it would take approximately 36,000 bales to pay the rental on our plant. Interest on investment, repairs, accidents to plants and employes are legitimate items to be considered. It would have required at least 60,000 bales to have paid fixed operating expenses and rents, and secured a reasonable earning. The cotton grown in 1905 within a circle having a radius of fifty miles on either side of Shawnee, was 167,258 bales. The territory with no railroad connections with Shawnee, raised 47,715 bales. The territory with only partial connection with Shawnee raised 57,976 bales, not more than one-half of which could have been compressed at Shawnee, or at least 28,988 bales could not have been compressed in Shawnee. The counties and districts having other compresses raised 68,329 bales which we could not reasonably expect to have been compressed at Shawnee. In fact the Shawnee press, disregarding competition, had a fair opportunity of receiving for compression the cotton of Pottawatomie county, one-half of Lincoln and Payne counties, and one-half of districts 13, 17 and 18, which amounted to 64,020. Is it not probable with the Oklahoma City, Paul's Valley, South McAlester and Ada compresses in direct competition, and on the direct lines to tide water, that the Shawnee Company would have received much less than 60,000 bales? The year of 1904, the Shawnee Compress Company handled only 54,982 with a crop of 20 per cent larger than in 1905. (Record, page 105).

From this analysis, the restriction was reasonable under either of the views presented.

1st. The Shawnee Company was not excluded from two-thirds of the two territories as shown by the plat.

2nd. The restriction was not more extensive, if confined to the Shawnee press, than reasonably necessary to protect the Gulf Company.

The evidence does not establish a monopoly or monopolistic purpose of the Gulf Compress Company.

The Supreme Court of the Territory clearly committed error in directing a judgment to be entered perpetually enjoining the lease, or in case of its execution ordering the cancellation of same.

We therefore, submit the cause, believing that the Supreme Court of the Territory of Oklahoma ought to be reversed and the decree of the trial court affirmed.

B. B. BLAKENEY,
Of Counsel for Appellants.

MAPS

TOO

LARGE

FOR

FILMING

Number of bales of cotton raised in the Muskogee

District 5	445
District 6	3,200
District 7	8,754
District 8	4,844
District 9	9,284
District 10	15,901
District 11	17,219
District 12	15,878
District 14	24,491
District 28	none
District 4	260
Total	100,671

There being a press at Sapulpa, and one at South McAlester, in direct competition with the Muskogee plant.

The Muskogee plant has no railroad connection with Districts 8 and 9.

SHAWNEE DISTRICT.

District 9	9,284
District 13	12,902
District 16	20,250
District 17	19,322
District 18	5,591
Cleveland County	13,590
Oklahoma County	6,050
Logan County	12,691
Lincoln County	32,546
Pottawatomie County	32,032
Payne County	6,478
Total	173,736

There are in direct competition with the Shawnee press, presses at Ada, Paul's Valley, Oklahoma City, Guthrie, Chickasha, McAlester, Sapulpa and El Reno.

Shawnee has no railway connections with:

Cleveland County	13,590
District 9	9,284
District 16	20,250
District 18	5,591
Total	47,715

OKLAHOMA CITY DISTRICT.

District 9	9,284
District 17	19,322
District 18	5,591
District 19	10,912
Canadian County	310
Kingfisher County	2,522
Logan County	12,691
Payne County	6,478
Lincoln County	32,546
Pottawatomie County	35,032
Oklahoma County	6,050
Cleveland County	13,590
Caddo County	22,036
Total	176,264

Within this district there are six other companies, viz: At Paul's Valley, Ada, Chickasha, El Reno, Guthrie and Shawnee.

Districts and counties which are not connected with Oklahoma City by rail:

District 9	2,984
Kingfisher County	2,522
Caddo County	22,032
Total	33,833

Total of cotton raised in three districts:

District 4	260
District 5	445
District 6	3,200
District 7	8,754
District 8	4,844
District 9	9,284
District 10	15,901
District 11	17,219
District 12	15,874
District 13	12,902
District 14	24,491
District 16	20,250
District 17	19,322
District 18	5,591
District 19	10,912
Lincoln County	32,546
Payne County	6,478
Pottawatomie County	35,032
Cleveland County	13,590
Oklahoma County	6,050
Logan County	12,691
Kingfisher County	2,522
Canadian County	310
Caddo County	22,036
Total	299,304

Following districts and counties have no railroad connection with Gulf Compress plants:

District 8	4,844
District 9	9,284
Kingfisher County	2,522
Caddo County	22,036
Total	38,686

Following counties and districts having presses in them:

District 8	4,844
District 16	20,250
District 17	19,322
District 19	10,912
Logan County	12,691
Canadian County	310
Total	68,329

Total number in three districts	299,304
Total number no connection and county competition	107,015
Total accessible to Gulf presses	192,289

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CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 140.

THE SHAWNEE COMPRESS COMPANY, THE GULF COMPRESS COMPANY, T. F. STUBBS, ET. AL., Appellants,

vs.

NEIL P. ANDERSON, B. L. ANDERSON, AND MORRIS E. BURNEY, CO-PARTNERS, AS NEIL P. ANDERSON & COMPANY, and F. E. ANDERSON, M. D. ANDERSON, AND W. L. CLAYTON, CO-PARTNERS, AS ANDERSON, CLAYTON & COMPANY.

Brief on Behalf of Appellees.

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Counsel for Appellees.

McGILL & WALLACE, Law Printers, Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

THE SHAWNEE COMPRESS COMPANY, THE GULF COMPRESS COMPANY, T. F. STUBBS, *et al.*, *Appellants*,

vs.

NEIL P. ANDERSON, B. L. ANDERSON and MORRIS E. BURNEY, Copartners as NEIL P. ANDERSON & COMPANY, and F. E. ANDERSON, M. D. ANDERSON and W. L. CLAYTON, Copartners as ANDERSON, CLAYTON & COMPANY, *Appellees*

No. 140.

BRIEF FOR APPELLEES.

This case is brought to this court upon appeal from the Supreme Court of the Territory of Oklahoma, wherein the judgment of the court was reversed and the cause remanded to the District Court of Pottawatomie County with instructions for that court to render judgment in favor of the appellees, in conformity with the opinion of the Supreme Court of Oklahoma and the prayer of the amended petition.

Statement of Facts.

The appellees filed their verified petition (R., 10–14) May 2, 1905, in the District Court of Pottawatomie County, Oklahoma, alleging in substance the following facts:

1. That the firm of Neil P. Anderson & Company (copartners) owned sixty-nine shares of the capital stock of appellant Shawnee Compress Company, and that the firm of Anderson, Clayton & Company (copartners) owned sixty-four shares of the capital stock of said appellant.

2. That said Shawnee Compress Company is a corporation organized under the laws of Oklahoma, with a present capital stock of $50,000, divided into shares of $100 each, and that all of said stock has been subscribed and issued; that appellant T. F. Stubbs claims to be president of said company, and assumes to act as such, and appellant W. H. Beatty claims to be secretary thereof, and assumes to act as such; that appellant J. M. Aydelotte claimed to be president thereof, and assumed to act as such for several years immediately prior to April 24, 1905; that appellant Gulf Compress Company is a corporation created and existing under and by virtue of the laws of the State of Alabama, and appellant C. C. Hanson claims to be president thereof, and assumes to act as such, and R. E. L. Martin claims to be and assumes to act as secretary thereof.

3. That sometime prior to April 13, 1905, certain of the stockholders, acting and claiming to be officers of

the said Shawnee Compress Company, fraudulently and illegally conceived the idea of leasing the entire property and business of said company, together with its good will and right to operate same, to said Gulf Compress Company. On the said 13th day of April, 1905, said J. M. Aydelotte, assuming to act as president of said Shawnee Compress Company, sent to said Neil P. Anderson & Co., and to Anderson, Clayton & Co., a pretended notice stating that there would be a special meeting of the stockholders of said Shawnee Compress Company on April 24, 1905, at 11 o'clock A. M., which said notice is attached as "Exhibit A" thereof, but utterly failed to state any purpose for which said meeting was called (R., 14); that at said pretended meeting of stockholders, held on said 24th day of April, 1905, in pursuance of said notice, certain of said stockholders of said company (W. H. Beatty, T. F. Stubbs and C. J. Benson) assuming to represent a majority of the stock of said company, over the protest and objection of the appellees, and without any legal excuse therefor, assumed to pass a motion to accept a certain proposition made by the said Gulf Compress Company for the leasing of the entire business, good will, property, franchise, etc, of said Shawnee Compress Company for a period of five years, at a stipulated rental of $6,000.00 per year, and that said stockholders so claiming and assuming to represent a majority of the stock of said company also passed a certain resolution pretending to amend the by-laws of said company so as to provide for a board of directors of only three members, and thereupon assumed to elect as such board of

directors, by resolution, appellee F. E. Anderson and appellants T. F. Stubbs and W. H. Beatty, and that the minutes of said stockholders' meeting, kept by said Beatty, claiming to act as secretary thereof, are incorrect in stating that election of said directors was by ballot and that said F. E. Anderson and B. L. Anderson voted on the proposition to amend said by-laws and elect a board of directors consisting of only three members (R., 16 and 28).

4. That following the said pretended stockholders' meeting the said pretended board of directors, consisting of said three members, held a pretended meeting on April 24, 1905, but did not attempt any action relating to the leasing of the property, business, good will, etc., of said Shawnee Compress Company (R., 16 and 28); that thereafter, and on the 25th day of April, 1905, said T. F. Stubbs and W. H. Beatty, assuming to act as president and secretary, respectively, of the said Shawnee Compress Company, wired said F. E. Anderson to the effect that a special meeting of said pretended board of directors would be held in the city of Shawnee on April 26, 1905, at 4 o'clock P. M., but said F. E. Anderson did not attend said meeting, yet the said Stubbs and Beatty, assuming to act as majority of the board of directors of said Shawnee Compress Co., pretended to hold a meeting and, thereat, to pass a certain resolution authorizing themselves, as president and secretary of said company, respectively, to execute such lease to said Gulf Compress Company (R., 17); that thereafter, on the said 26th day of April, 1905, the

said Stubbs and Beatty, so assuming to act as president and secretary, respectively, of said Shawnee Compress Company, sent a notice to said F. E. Anderson, stating that a meeting of said pretended board of directors of the Shawnee Compress Company would be held at its office in the city of Shawnee on May 1, 1905, at the hour of 4 o'clock P. M., to transact any business which might come before the meeting (R., 17); and on the same date, to wit., April 26, 1905, the said Stubbs and Beatty, so assuming to act as president and secretary of said Shawnee Compress Company, pretended to execute a written lease to said Gulf Compress Company for the period of five years, at the stipulated rental of $6,000 per annum, and which pretended contract of lease consists of thirteen paragraphs and contains many fraudulent and illegal provisions—special attention is now called to paragraph 6 thereof as follows: "The landlord (Shawnee Compress Company) shall not, during the term of this lease, without the consent of the tenant (Gulf Compress Company), directly or indirectly engage in the compression of cotton within fifty miles of any plant operated by the tenant" (Gulf Compress Company) (R., 19); and also a part of paragraph 10 thereof as follows: "The landlord (Shawnee Compress Company) agrees and pledges the tenant (Gulf Compress Company) its good-will, moral and real support, and that it, individually and collectively, will render the tenant (Gulf Compress Company) every assistance in discouraging unreasonable and unnecessary competition" (R., 20).

5. That thereafter on said 1st day of May, 1905, in

pursuance of said pretended notice said F. E. Anderson, T. F. Stubbs and W. H. Beatty met at the office of said Shawnee Compress Company, in the said city of Shawnee, but said Anderson immediately, upon the calling of said meeting to order, declined to participate therein and filed a written protest, challenging the legality of said meeting and the authority of the members of the said pretended board of directors to act as such upon the grounds, among others, that said pretended said members of said board had never been legally elected or chosen, and that said parties had no legal power or authority whatever to act as a board of directors of said Shawnee Compress Company (R., 22); but the said Stubbs and Beatty, over the said written protest and objection of said Anderson, assuming to act as a majority of the members of the said board of directors, proceeded to pass certain pretended resolutions authorizing the leasing, by themselves as president and secretary, respectively, of said Shawnee Compress Company of its entire property, business, franchise, good will, etc. (R., 23–24).

6. That all the proceedings had at the said pretended stockholders' meeting of said Shawnee Compress Company of April 24, 1905, and of the said pretended directors' meeting of April 24, 26 and May 1, 1905, pretending to authorize the leasing of said property, business, good will, etc., of the said Shawnee Compress Co., are wholly illegal and beyond the powers of the said stockholders and directors of said corporation; that the purposes for which said corporation was organized are to construct and operate a cotton compress in the said city

of Shawnee, for the purpose of receiving, compressing, weighing, storing, buying, handling, selling and ginning cotton; that the said pretended board of directors which were attempted to be selected and chosen at the said pretended stockholders' meeting of April 24, 1905, were never legally elected and have no power or authority to represent said Shawnee Compress Co., as its board of directors, under the articles of incorporation and by-laws of said company, and that the said parties so claiming to constitute said board of directors of said company and assuming to act therefor have no legal power or authority to bind same to the said pretended lease contract, and that said contract is void as against the rights of these appellees, they being minority stockholders of said Shawnee Compress Co. (R., 13).

Appellees thereupon prayed that the said pretended lease contract be declared null and void and, therefore, cancelled and set aside, and that said T. F. Stubbs and W. H. Beatty be enjoined from assuming to act as president and secretary of said company and from executing or taking any further proceedings of any kind whatever looking to the execution of a lease of the property, business, etc., of said Shawnee Compress Co. to the said Gulf Compress Co., and from turning over any of the property of said former company to the latter, and for all other just and equitable relief, and that, in the meantime, a temporary injunction be granted against said Stubbs and Beatty as such officers (R., 13–14).

This petition was presented to the probate judge of said Pottawatomie county and, upon proper showing be-

ing made of the absence of the district judge therefrom, a temporary injunction against said Beatty and Stubbs as prayed for in said petition, was granted by said probate judge (R., 25–26).

Thereafter and on May 13, 1905, said appellees filed in said cause their amended petition restating all the facts alleged in their said original petition in more detail and adding thereto two additional paragraphs (numbered 4 and 5 of said amended petition), charging, in substance, that the purpose of said Stubbs and Beatty, and of certain of the other stockholders who joined with them in the efforts to procure the negotiations of said lease to the Gulf Compress Co., was not for the purpose of advancing the interests of said Shawnee Compress Co., but in the supposed personal interests of said Stubbs and Beatty, and that, in any event, there were no exigences of the business of said Shawnee Compress Co., requiring the negotiations of such lease, as its net earnings for the previous season (1904–5) were, as shown by the statement of the secretary and treasurer thereof, the sum of $7,485.59; and also that the purpose of the officers of the Gulf Compress Co. in procuring such lease was to secure a monopoly of the compressing business on behalf of said latter company and to further restrict competition between the compresses already operated by said company and the said compress previously owned and operated by the said Shawnee Compress Co., and that the said pretended lease contract from the said Shawnee Compress Co. to said Gulf Compress Co. is null and void for the additional reason that it was so executed

for the purpose of so restricting competition in the said compressing business (R., 26–32, especially paragraphs 4 and 5 of said amended petition).

That thereafter and on said May 13, 1905, appellants Shawnee Compress Co., Gulf Compress Co., and Stubbs, Beatty and Aydelotte filed in said cause their demurrer to the amended petition of plaintiffs, on the ground of a defect of parties plaintiff and defendant; "that there is a misjoiner of causes of action, and that same does not state facts sufficient to constitute a cause of action," and also specifically to paragraphs 4, 5 and 6 of said petition, on the ground that neither of same state facts sufficient to constitute a cause of action.

Thereafter and on May 27, 1905, said demurrer was overruled, and thereafter and on the same date appellants Shawnee Compress Co., Gulf Compress Co., Beatty, Stubbs, Aydelotte and Hanson filed their answer to said amended petition, containing, in substance, the following material allegations:

1. A general denial of each of the allegations of said petition, except such as thereinafter are specifically admitted.

2. Specifically admitting the incorporation of the said Shawnee Compress Co. under the laws of the Territory of Oklahoma, with a capital of $50,000, and the incorporation of the said Gulf Compress Co. under the laws of the State of Alabama, and, in various subsequent portions of said answer, effectively admitting all of the exhibits referred to and set out as parts of both the original and amended petitions of appellees and marked

Exhibits A, B, C, D, E, F, G and H, respectively, of each of said petitions (R., 14–24), and that appellees are copartners under the firm names of Neil P. Anderson & Co. and Anderson, Clayton & Co., and owned stock in said Shawnee Compress Co., as in said amended petition alleged.

3. That said W. H. Beatty and T. F. Stubbs were, on the date of said stockholders' meeting of April 24, 1905, and for more than ten days prior thereto, each the owner of 133 shares of the capital stock of said Shawnee Compress Co. (R., 35).

4. That said Shawnee Compress Co. was, and has been for more than one year last past, indebted to the Webb Compress Co., Ltd., in the sum of $11,250, and to the Shawnee National Bank in the sum of $6,000.00, and that all of said indebtedness was past due since January 1, 1905, and that each of said creditors was pressing and demanding payment of said indebtedness and threatening to enforce such payment by legal proceedings (R., 35).

5. That at the said stockholders' meeting of April 24, 1905, the stockholders of said Shawnee Compress Co. elected a board of directors, composed of W. H. Beatty, T. F. Stubbs and F. E. Anderson, and that each of said parties accepted the duties imposed upon him as such director, and that they have continued since said date to act as such, and that they were so elected by the unanimous vote of the stockholders present at said meeting (R., 35).

6. That the 69 shares of stock owned by said Neil P. Anderson & Co. had always been represented and voted

at stockholders' meetings of said Shawnee Compress Co. by said B. L. Anderson, as agent of said firm and one of the copartners therein, and that the 64 shares of stock owned by said Anderson, Clayton & Co. had always been represented and voted at stockholders' meetings of said Shawnee Compress Co. by F. E. Anderson, as agent of said firm and one of the copartners therein (R., 35–36).

7. That at the said stockholders' meeting of April 24, 1905, said W. H. Beatty, as secretary of said Shawnee Compress Co., reported to the stockholders present that the $6,000.00 due the Shawnee National Bank could be procured as a loan from the Gulf Compress Co., and an extension of the time of payment of the indebtedness due the Webb Compress Co., Ltd., could be procured by said Gulf Compress Co., on behalf of said Shawnee Compress Co., upon the latter company executing to the former a lease for the period of five years, at the annual rental of $6,000, and that after a full consideration of said proposition, in which said B. L. Anderson and F. E. Anderson participated, said stockholders present at said meeting appointed from among their number a committee composed of C. J. Benson, W. H. Beatty and F. E. Anderson, to confer with the officers of the Gulf Compress Co., and to obtain a higher rental from said company if possible, and, if not, then to accept said proposition made by the said Gulf Compress Co., " and that pursuant to the authority conferred therein " a meeting of the board of directors of said Shawnee Compress Co. was called for April 26, 1905, at which time the said matters were considered and the said committee reported to said board

which authorized the president and secretary of the Shawnee Compress Co. to enter into said lease on its behalf, and that because of the absence of F. E. Anderson a subsequent meeting of said board of directors was called for May 1, 1905, at the hour of 4 o'clock P. M., which said meeting was attended by all of the three members thereof (R., 36).

8. That they expressly deny that the minutes of said stockholders' meeting of April 24, 1905, are false or untrue, except that the words "by ballot" were erroneously inserted therein (R., 36).

9. That at the said meeting of the board of directors of May 1, 1905, said board accepted the proposition of lease tendered by said Gulf Compress Co., and the president and secretary of said Shawnee Compress Co. executed and delivered same to the Gulf Compress Co. (R., 37).

10. That the execution of said lease was necessary in order to procure money to pay the indebtedness of said Shawnee Compress Co., and to procure an extension of time of payment of the indebtedness due the Webb Compress Co., Ltd., and that said lease was in all respects valid, regular and authorized by law, and is still valid and binding upon said appellants; that the consideration therein paid was fair and reasonable and for the best interests of the stockholders of said company, and that appellants could procure said second mortgage money in no other way and the property of the said Shawnee Compress Co., would have been sold at a great sacrifice unless said lease was made (R., 37).

11. Appellants allege, as affirmative defenses, or rather in the way of avoidance, various other matters, charging the appellees with having entered into a conspiracy to injure Messrs. Beatty and Stubbs and the stockholders of said Shawnee Compress Co., other than themselves; to injure, harrass and annoy the said Gulf Compress Co., and to prevent it from carrying on its business of compressing cotton in the Territory of Oklahoma; and to depress the value of the stock and properties of said Shawnee Compress Co., and thereby procure a sale of one or the other of themselves (R., 37, 38, 39, paragraphs 12, 13, 14 and 15 of answer), but as there was no material evidence tending to substantiate any of these allegations they are passed without further notice or comment.

12. That said Neil P. Anderson & Co., by reason of their agent, having participated in the stockholders' meeting of April 24, 1905, and Anderson, Clayton & Co., by reason of their agent, having participated in said meeting, and also having participated in subsequent meetings of the board of directors of said Shawnee Compress Co. as a member thereof, are estopped from denying that all of said meetings were regularly called, and that the said action of the stockholders and directors of said company are in all respects legal, and have been, by all its stockholders, duly and regularly ratified, and are now binding upon said corporation (R., 40, paragraph 16 of answer). Wherefore appellants pray that said injunction be dissolved and that they recover costs and attorneys' fees, and for such other relief as the premises justify.

Thereafter, and on said May 27, 1905, appellees filed

in said cause their demurrer to paragraphs 12 and 13 of the said answer of appellants, for the reason that neither of said paragraphs states facts sufficient to constitute a ground of defense (R., 41), and thereafter, and on the same date, said demurrer was overruled by the court, to which appellees duly excepted (R., 41–42); that thereafter, and on the same date, appellees filed in said cause their reply to the answer of appellants, denying each and every material allegation of new matter therein contained which is in conflict with or contradictory to any of the allegations of their said amended petition (R., 42); thereafter, and on the 16th day of September, 1905, appellees made application to the court for leave to file an amendment to paragraph 5 of their said amended petition, which leave was granted as to the first clause thereof alleging more specifically that the said Gulf Compress Co. constitutes, in its operation and method of doing business, a monopoly and trust in restraint of trade and commerce, and also that the said Gulf Compress Co., C.C. Hanson, its president, and R. E. L. Martin, its secretary, have, by the attempted execution of the pretended lease contract, entered into a fraudulent combination in restraint of trade with the said Shawnee Compress Co., and T. F. Stubbs, as its president, and W. H. Beatty, as its secretary, in violation of both the Federal and Territorial statutes (R., 43–44).

Said action was tried by the court and resulted on September 20, 1905, in a judgment for appellants dissolving the temporary injunction, dismissing appellees' amended petition and taxing the costs of said action to

appellees; and, on the same date, appellees filed their motion for a new trial, which was duly overruled (R., 210); from which said judgment and order appellees commenced their proceeding in error by filing in the Supreme Court of Oklahoma the record consisting of petition in error and case—made on October 20, 1905.

ARGUMENT.

I.

It is contended on behalf of the appellants that the Supreme Court of Oklahoma Territory erred in holding that the contract of lease from the Shawnee Compress Company to the Gulf Compress Company of April 26, 1905 (R., 18–21), tended to create a combination unreasonably in restraint of trade, the prevention of competition and the establishment of a monopoly, therefore being against public policy. The appellees are clearly of the opinion that on that branch of the case the decision was right, and a careful analysis of the facts shows that the Supreme Court of the Territory properly held the contract illegal.

The law applicable to this case comes from three sources:

a. The Act of Congress 26 Stat. at Large, 209, Chap. 647:

SEC. 3. "Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any territory of the United States or of the District of Columbia * * * is hereby declared illegal."

b. The statute of Oklahoma applicable thereto (Wilson's Statutes, Sections 819 and 820).

SEC. 819. "Every contract by which anyone is restrained from exercising a lawful profession, trade or business of any kind, otherwise than as provided by the next two sections, is to that extent void.

SEC. 820. "One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city or part thereof, so long as the buyer, or any person deriving title to the good-will from him carries on a like business therein."

c. The common law which declares all contracts in unreasonable restraint of trade to be contrary to public policy and void.

The Act of Congress referred to does not say or mean every contract in *unreasonable restraint* of trade, but *every* contract in *restraint* of trade.

In the case of (1906) Pocahontas Coke Co. *vs.* Powhatan Coal and C. Co., 60 W. Va., 508; 56 S. E., 264; 10 L. R. A. (N. S.) 268, 281, the court said:

> "It may be said in this connection that the determination of the question whether or not a contract is in restraint of trade is to be arrived at in exactly the same way and under exactly the same rules, whether the case falls under the provision of the act of Congress or under the rules of the common law. The difference between the act and the common law does not lie in the manner of ascertaining whether or not restraint exists, but in the degree of restraint required to render the contract illegal.

> Under the act of Congress any restraintis illegal, while, under the common law, only unreasonable restraint is illegal."

The contract in the case at bar provided for a lease for five years, at an annual rental of $6,000, and also that "The landlord (Shawnee Compress Company) shall not, during the term of this lease, without the consent of the tenant (Gulf Compress Company) directly or indirectly engage in the compression of cotton within fifty miles of any plant operated by the tenant (Gulf Compress Company) (R., 19). * * * "The landlord (Shawnee Compress Company) agrees and pledges the tenant (Gulf Compress Company) its good-will, moral and real support, and that it, individually and collectively, will render the tenant (Gulf Compress Company) every assistance in discouraging unreasonable and unnecessary competition" (R., 20).

In Addyston Pipe and Steel Co. *vs.* United States (175 U. S., 211), Mr. Justice Peckham, in delivering the opinion of the court, said:

> "We have no doubt that where the immediate effect of a contract or combination among particular dealers in a commodity is to destroy competition between them and others, so that the parties to the contract or combination may obtain increased prices for themselves, such contract or combination amounts to a restraint of trade in the commodity. * * * The question is as to the effect of such combination upon the trade in the article, and if that effect be to destroy competition, and thus advance the price, the combination is one in restraint of trade."

"Though there be an apparent main lawful contract yet, if its obvious purpose and necessary result are to establish a monopoly, the contract is void. * * * It is deducible from the authorities that if the direct and necessary or natural effect of a contract or combination among producers and sellers of a commodity is to restrain competition and control prices, to the injury of the public, when all the powers of the contract or combination have been exercised, the contract or combination is in unreasonable restraint of trade and against public policy. * * * A contract which is charged to be in restraint of trade is not to be tested by what has been done under it, but by what may be done under it; not by its performance, but by its powers of performance when fully exercised. * * * The illegality of a contract or combination for the restraint of competition does not lie in the agreement not to compete but in its reflex injury to the public. One way to control prices is to destroy or restrain competition. It has been said that many of the cases decided in America, holding contracts valid as not being in unreasonable restraint of trade, would have been held otherwise if the modern doctrine as to restraint of competition had been properly applied."

Pocahontas Coke Co. *vs.* Powhatan Coal, etc., Co., *supra.*

Other facts leading inevitably to the conclusion reached by the Supreme Court of Oklahoma on this proposition may be referred to briefly. On April 18, 1905, in accordance with the previous arrangement between them, C. C. Hanson, as president of the Gulf Compress Company, wrote to said Beatty, as secretary of

Shawnee Compress Company, submitting a written proposition to lease the entire physical property, as well as the business and good will of said Shawnee Compress Company for the period of five years, and in said written proposition and as a material inducement to procure the execution of such lease on the part of the Shawnee Compress Company made the following suggestions, to wit: "In making this formal offer, I desire to submit a few reasons why, as I see it, you can afford to lease us your property for a term of five years, at the figures offered, or say, possibly less than the plant is now netting you or what may be considered as the net income in sight during the next five years. Our getting together on a lease proposition means the avoiding for each other, directly or indirectly, of the possibility, if not probability, of unnecessary competition" (R., 197).

While testifying as a witness on behalf of appellees Mr. Hanson, when his attention was called to this particular provision of his said written proposition, admits that it was one of his purposes in procuring the execution of said lease to prevent what he termed "unnecessary competition," his testimony concerning this matter being, in part, as follows:

> "A. We are operating a press to day in Oklahoma City and did last season, and our operation there explains what I had in mind.
>
> "Q. So then you did want to lease this press to avoid competition between the company operating it here and your company?
>
> "A. I will say unnecessary competition, but not competition.

"Q. Well, where is the line drawn between competition and unnecessary competition?

"A. Well, one is unnecessary competition where you are doing so much for nothing and you soon become bankrupt.

"Q. Don't make the proper profits?

"A. When you become bankrupt, that creates unnecessary competition" (R., 62).

Referring to the personal negotiations which he had previously with Mr. Beatty relative to the matter of the execution of the proposed lease, Mr. Hanson testified, in part, as follows:

"Q Now Mr. Beatty went to Memphis to consult with you at your request, I believe you said?

"A. I said so, but since reflecting over the matter I believe that Mr. Beattty wrote me first and made an appointment to come over. This morning I was in doubt, but that strikes me as being the fact now.

"Q. Well, while he was there you discussed this whole matter, did you, about the advantages and disadvantages of the lease contract?

"A. I don't recollect any detailed discussion; I would say, yes, ordinarily.

"Q. And the matter which you designate as unnecessary competition between your compress at Oklahoma City, and the plant here also was discussed, was it?

"A. I would say yes. I don't recollect specifically.

"Q. Who drew the lease contract?

"A. I did (R., 68)."

See also his testimony (R., 85) relating to the same matter.

That the two provisions of said lease contract hereinbefore quoted are void, as being in unlawful restraint of trade and business, will not be questioned (Hulen *vs.* Earel (Okla., 73 Pac., 927); but, it is contended by counsel for appellants that the fact of these two provisions being illegal and void will not render the entire lease contract void, and, consequently, all the other provisions thereof are valid and inforcible; but this is not the rule where an illegal or otherwise void provision of a contract forms such part of the inducement or consideration as (without it) it cannot be definitely determined that the remaining portion of such contract would have been entered into.

SEC. 810, Okla. Stat., 1893 (Wilson's Stat., Sec. 767), provides that, "If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void." In view of the evidence hereinbefore cited, it certainly cannot be judicially determined that any portion of the lease contract involved in the case at bar would unquestionably have been entered into regardless of the two provisions hereinbefore quoted providing for such illegal restraint of trade and competition, hence the entire contract must fall.

Bishop *vs.* Palmer, 146 Mass., 469, 16 N. E., 299.
Western-Wooden Ware Ass'n *vs.* Starkey, 84 Mich., 76, 47 N. W., 604.
Saratoga Co. Bank *vs.* King, 44 N. Y., 87.
Consumer's Oil Co. *vs.* Nunnemaker, 142 Ind., 560, 41 N. E., 1048.
More *vs.* Bonnet, 40 Cal., 251.
Frost *vs.* More, *Ibid.*, 347.

In the opinion of the court in the case of Bishop *vs.* Palmer, *supra*, it is declared that:

> "The defendants' promise which is declared on was made in consideration of the sale and delivery of the business, plant, property, and contracts of the plaintiff, and the faithful performance of the covenants and agreements contained in the written instrument signed by the parties. The parties made no apportionment or separate valuation of the different elements of the consideration. The business, plant, property, contracts, and covenants were all combined as forming one entire consideration. There is no way of ascertaining what valuation was put by the parties upon either portion of it. There is no suggestion that there was any such separate valuation, and any estimate which might now be put upon any item would not be the estimate of the parties. It is contended by the defendants that each one of the three particular covenants and agreements into which the plaintiff entered is illegal and void, as being in restraint of trade. It is sufficient for us to say that the first of them is clearly so. It being a general agreement, without any limitation of space, that, for and during the period of five years, he will not, either directly or indirectly, continue in, carry on, or engage in, the business of manufacturing or dealing in bed-quilts or comfortables, or of any business of which that may form any part. Thus much is virtually conceded by the plaintiff, and so are the authorities.
>
> "Two principal grounds on which such contracts are held to be void are that they tend to deprive the public of the services of men in the employments and capacities in which they may be most useful,

and that they expose the public to the evils of monopoly. * * * The question then arises whether an action can be supported upon the promise of the defendants founded upon such a consideration as that which has been described. As a general rule, where a promise is made for one entire consideration a part of which is fraudulent, immoral or unlawful, and there has been no apportionment made, or means of apportionment furnished, by the parties themselves, it is well settled that no action will lie upon the promise. If the bad part of the consideration is not severable from the good, the whole promise fails. * * *

"It is urged that this rule does not apply to a stipulation of this character which violates no penal statute, which contains nothing *malum in se*, and which is simply a promise enforcible at law. But a contract in restraint of trade is held to be void because it tends to the prejudice of the public. It is, therefore, deemed by the law to be not merely an insufficient or invalid consideration, but a vicious one. Being so, it rests on the same ground as if such contracts were forbidden by positive statutes. They are forbidden by the common law, and are held to be illegal."

In Saratoga County Bank *vs.* King, *supra*, it is held that—

"A contract in illegal restraint of trade is wholly void when the illegal covenants form part of the entire consideration and both parties are in fault."

In Consumer's Oil Co. *vs.* Nunnemaker, *supra*, it is held that:

"A contract by which defendant, formerly a dealer in oil in the city of H., agreed to refrain from following such occupation for five years within the State of Indiana, the city of Indianapolis excepted, is unreasonable and void as a restriction of trade."

"A contract by which one formerly dealing in oil in the city of H. agreed not to prosecute such business within the State of Indiana, the city of Indianapolis excepted, for the period of five years, is not divisible, and, being void as to the restriction within the State, is void as to the restriction within the city of H."

In More *vs.* Bonnet, *supra*, it is held that:

"A contract by which one of the parties binds himself not to engage in a particular business or occupation 'in the city and county of San Francisco, or State of California' is in restraint of trade, and therefore void, as against public policy."

"Such a contract is an entire contract, and cannot be severed so as to enforce that portion relating to the city and county of San Francisco, and reject that relating to the State of California."

"The question of whether a contract is entire or separable, can only be solved by considering both the language and the subject matter of the contract."

"A contract will generally be held to be severable when the price is expressly apportioned by the contract, or the apportionment may be implied by law to each item to be performed."

By the provisions of the lease contract under consideration, the said Shawnee Compress Co. assumes to convey, for a period of five years, all its physical property, good

will, moral and real support, etc., to the said Gulf Compress Co., and also to agree that it will not only assist the said Gulf Compress Co. "in discouraging unreasonable and unnecessary competition," but also that during the term of said lease it will not either directly or indirectly engage in the compression of cotton within fifty miles of any one of the twenty-seven or twenty-eight compresses already possessed, either as owner or lessee, and operated by the said Gulf Compress Co., which said provisions, as shown by the letter and oral testimony of Mr. Hanson, were very material considerations in inducing him to enter into said lease-contract on behalf of said Gulf Compress Co.; and applying the principles declared in the cases just cited to said provisions, there can be no reasonable doubt that same render the entire lease contract void, as being in illegal restraint of trade and competition. See also to the effect that, "A contract based upon several considerations, one of which is unlawful, is void."

Edwards Co. *vs.* Jennings, 89 Tex., 618, 35 S. W., 1053.
Gage *vs.* Fisher, 5 N. D., 297, 65 N. W., 809.
Collins *vs.* Merrell (Ky.), 2 Met., 163.
St. L. J. & Co. R. R. Co. *vs.* Mathers, 104 Ill., 257.

Furthermore, we insist that these said provisions, considered in connection with the undisputed testimony of Mr. Hanson to the effect that one of his purposes in procuring the execution of said lease on behalf of the Gulf Compress Co. was to prevent what he terms unreasonable or unnecessary competition, renders the entire lease contract void, under the provisions of Sec. 3, of Chap.

647, 26 U. S. Stat. at Large, 209, which said section is directly applicable to trade and commerce within each of the Territories of the United States and the District of Columbia, as well as to such trade and commerce between any of said Territories and other States and Territories. Of course, Mr. Hanson and the other officers of his company who are directly interested in preventing all competition with the various presses operated by said company would very naturally term any and all competition therewith unreasonable or unnecessary; but even conceding that the purpose of said officers was only to shut out or restrict such competition as might, under the common law, be properly termed unreasonable or unnecessary, still a contract, one of the purposes of which is to restrict same, is illegal under the Federal act just cited.

In the opinion of the majority of the court, in the case of the Northern Securities Company *vs.* United States, 193 U. S., 196; 48 L. Ed., 679, it is specially declared, "That the act is not limited to restraints of interstate and international trade or commerce that are unreasonable in their nature, but embraces all direct restraints imposed by any combination, conspiracy, or monopoly upon such trade or commerce;" and also, "That the natural effect of competition is to increase commerce, and an agreement whose direct effect is to prevent this play of competition, restrains instead of promoting trade and commerce."

"That to vitiate a combination, such as the act of Congress condemns, it need not be shown that the combina-

tion, in fact, results or will result in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce, or tends to create a monopoly in such trade or commerce, and to deprive the public of the advantages that flow from free competition."

See also Western Wooden Ware Association *vs.* Starkey, *supra*, 84 Mich., 76, 47 N. W., 604.

Santa Clara Val. M. & L. Co. *vs.* Hayes, 76 Cal., 387, 18 Pac., 391.

Pacific Factor Co. *vs.* Adler, 90 Cal., 110, 27 Pac., 36.

Anheuser-Busch Brewing Association *vs.* Houck, 88 Tex., 184, 30 S. W., 869.

State *vs.* Nebraska Distilling Co., 29 Neb., 700, 46 N. W., 155.

That a minority stockholder may prevent the carrying into effect of such a contract by injunction see Stewart *vs.* Erie & Western Trans. Co., 17 Minn., 372, wherein it is held that "A dissenting stockholder may have injunction to restrain the corporation from using its powers or funds for an unauthorized purpose, or from creating a monopoly."

In connection with the proposition now under consideration it is also important to bear in mind the fact that the Gulf Compress Company had been and intends to continue charging at least ten cents per bale more for compressing cotton at its Oklahoma City plant than had ever been charged by the said Shawnee Compress Company for the same service, and said Gulf Compress

Company also intends to put on this extra charge at the Shawnee press in the event of said lease contract being held to be valid (R., 63, 65, 78, 79).

It therefore becomes plain why the Supreme Court of the Territory applying the law to the facts found the contract of lease illegal. The reasoning of that court is not the interpretation put upon it by counsel for appellants. Mr. Hanson is the president and managing officer of the Gulf Compress Company, which in 18 months had secured control of nearly all of the 27 compresses operated by that company and which was leasing if possible plants every place they could be had as rapidly as they could be leased. In about a year before this lease the capital of said company had been increased from $25,000 to $1,000,000. The same Mr. Hanson is president and manager of another corporation, the Atlantic Compress Company, which has acquired control of 25 compresses. No compress of the one of said corporations is located in the same place with the other. There is no competition between them. They divide the territory and act in concert. The brain and hand of C. C. Hanson, president, guides the affairs and destinies of both, and his chief aim appears to be to stifle "unreasonable and unnecessary competition."

Whatever may be the "independent acts" of which the Gulf Compress Company is guilty it would appear more accurate to state some of them as follows:

1. It has by its methods obtained control of 27 plants and in so doing has used $400,000 of its $1,000,000 capital in a little more than a year.

2. That it is in the market leasing plants upon the best terms it can make and has $600,000 available for that purpose.

3. That it has as its president and manager a man who controls 25 plants belonging to another corporation.

4. That it has so managed its affairs that none of its plants compete with the plants of the said other corporation.

5. That in its offer to lease and its lease of the Shawnee compress it provided specifically that the lessor should not during the life of the lease engage in business within fifty miles of any plant operated by it.

6. That it required in said lease the agreement and pledge, by the lessor, that it "individually and collectively, will render every assistance" to it "in discouraging unreasonable and unnecessary competition."

7. That at Oklahoma city it charged 10 cents per bale more than other compresses by a so called charge for additional services, and evidenced a purpose to make a like additional charge at Shawnee.

8. That by loaning to said Beatty personally the sum of $7,500 it was able to procure the said lease.

9. That the terms of the contract of lease do not obligate the Gulf Compress Company to operate the plant at Shawnee.

It is of no significance that not a single stockholder of the Gulf Compress Company owns stock in the Atlantic Compress Company, if that be the fact, because the vital question is not who owns the stock, but how the corporations contract and conduct their business.

In the cases cited by counsel for the appellants on the question of the restraint of trade cannot be found an instance where a dissenting stockholder is seeking relief. The Territory was under the direct control of Congress, therefore the Federal statute operated in a different way. In nearly every case cited the defendant had entered into a contract, received the fruits of it, and then attempted to violate it.

In the case of Fowle *vs.* Park, 131 U. S., 88, a supposedly useful remedy had been discovered. Park purchased the right from the owner to manufacture and sell the discovery in certain States, and contracted not to sell within certain other territory. He violated his contract. The court said: "The policy of the law is to encourage useful discoveries by securing their fruits to those who make them." * * * "Public welfare is first considered and if it be not involved, and the restraint upon one party is not greater than the protection to the other requires, the contract may be sustained. The question is whether under the particular circumstances of the case, and the nature of the particular contract involved in it, the contract is, or is not reasonable."

The case of Gibbs *vs.* Baltimore Gas Company, 130 U. S., 396, denies the right of recovery because one of the parties to the contract upon which the right to recover was predicated, was prohibited by statute from making such a contract. Irrespective of the statute recovery would probably have been denied.

In the case of Richards *vs.* Seating Co., 87 Wis., 503, the court said:

"The test as to whether the restraint is reasonable or not is well expressed in the often cited case of Horner *vs.* Graves, 7 Bing., 735, where it is said: 'The question is whether the restraint is such only as to afford a fair protection to the interests of the party in favor of whom it is given, and not so large as to interfere with the interests of the public. Whatever restraint is larger than the necessary protection of the party can be of no benefit to either. It can only be oppressive; and, if oppressive, it is in the eye of the law unreasonable.' It is said, in substance, in many cases that all restraints are presumed to be bad, but if the circumstances are set forth that presumption may be excluded, and the court is to judge of these circumstances whether the contract be valid or not."

In Cincinnati Packet Co. *vs.* Bay, 200 U. S., 179, the clause in contract complained of was that in the sale of certain boats the vendors agreed not to interfere with vendees' passenger and freight business between certain specific intrastate points for five years. Held valid by Ohio law, and as no question of interstate commerce arose Sherman law did not apply.

In Davis *vs.* Booth, 131 Fed., 31, Davis had sold goodwill of business and agreed not to enter into a like business in the community for a specified time. He had received valuable consideration. He violated his agreement. Held, he was bound.

It is clear that a stipulation that another shall not pursue his trade employment at such a distance from the business of the person to be protected as that it could

not possibly affect or injure him would be unreasonable and absurd.

(1873) Oregon Steam Navigation Co. *vs.* Winsor, 20 Wall, 64, 69.

In Alger *vs.* Thacher, 19 Pickering, 51, the court, referring to contracts in restraint of trade, said:

> "1. Such contracts injure the parties making them because they diminish their means of procuring a livelihood and a competency for their families. They tempt improvident persons, for the sake of present gain, to deprive themselves of the power to make future acquisitions. And they expose such persons to imposition and oppression.
>
> "2. They tend to deprive the public of the services of men in the employments and capacities in which they may be most useful to the community as well as themselves.
>
> "3. They discourage industry and enterprise, and diminish the products of ingenuity and skill.
>
> "4. They prevent competition and enhance prices.
>
> "5. They expose the public to all evils of monopoly, and this is especially applicable to wealthy companies and large corporations, who have the means, unless restrained by the law, to exclude rivalry, monopolize business and engross the market. Against evils like these wise laws protect individuals and the public by declaring all such contracts void."

II.

Said lease contract should have been declared void and injunction granted because it was beyond the scope of

the legal powers of the Shawnee Compress Company to execute the lease contract in question as alleged in both the original and amended petitions (R., 13 and 31).

The purpose for which the said Shawnee Compress Company was incorporated, as stated in paragraph 2 of its articles of incorporation, "is to construct and operate a cotton compress in the city of Shawnee, county of Pottawatomie, Territory of Oklahoma, for the purpose of receiving, compressing, weighing, storing, buying, handling, selling and ginning cotton" (R., p. 243). Sec. 932 Ok. Stat., 1893 (Wilson's Stat., 943), provides, among other things, that, "Articles of incorporation must be prepared setting forth:

2d. The purpose for which it is formed."

Sec. 949 Ok. Stat., 1893 (Wilson's Stat., 961), provides, among other things, that, "Every corporation, as such, has power:

Fourth: To purchase, hold, transfer and convey such real and personal property as the legitimate purposes of the corporation may require," etc., and also further provides that, "In addition to the above enumerated powers, and to those expressly given in any other statutes under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers enumerated and given."

It is perfectly clear that the purposes enumerated in its articles of incorporation do not confer upon said Shawnee Compress Co. the power to lease its entire property, business, good will, etc., for a period of years, and, if it pos-

sesses such power, same must be derived from the provisions quoted from the section of our statute last cited, and it is equally clear that no such power is attempted to be conferred by said provisions.

The leading case in this country upon the question under consideration is that of Thomas *vs.* West Jersey R. R. Co., 101 U. S., 71; 25 L. Ed., 950, where, under statutory provisions equally as broad as, if not broader than, those just quoted, it was held that said railroad company had not the power to lease its road, rolling stock and other property to certain individuals for a period of years. In the opinion handed down by the United States Supreme Court in said case, per Mr. Justice Miller, on the question of the powers of a corporation to make such a lease, in the absence of any provision of the charter specifically authorizing the same, it is said that:

> "It is next insisted, in the language of counsel, that though this may be so, 'A corporate body may (as at common law) do any act which is not either expressly or impliedly prohibited by its charter; although where the act is unauthorized by the charter, a shareholder may enjoin its execution; and the State may, by proper process, forfeit the charter.'
>
> "We do not concur in this proposition. We take the general doctrine to be in this country, though there may be exceptional cases and some authorities to the contrary, that the powers of corporations organized under legislative statutes are such and such only as those statutes confer. Conceding the rule applicable to all statutes, that what is fairly implied is as much granted as what is expressed, it

> remains that the charter of a corporation is the measure of its powers, and that the enumeration of these powers implies the exclusion of all others."

Then, after citing numerous English cases on the question under consideration, the court further says:

> "It would be a waste of time to attempt to examine the American cases on the subject, which are more or less conflicting, but we think we are warranted in saying that this latest decision of the House of Lords represents the decided preponderance of authority, both in this country and in England, and is based upon sound principle."

While it is true that said court bases its opinion in said cause upon another settled rule of law, it is apparent that the rule announced as applicable to corporations in general was in no way modified but, if anything, rather strengthened by the subsequent portion of said opinion, declaring and applying said other rule, as will be seen from the language used, which is, in part, as follows:

> "There is another principle of equal importance and equally conclusive against the validity of this contract, which, if not coming exactly within the doctrine of *ultra vires* as we have just discussed it, shows very clearly that the railroad was without the power to make such a contract.
>
> "That principle is, that where a corporation, like a railroad company, has granted to it by charter a franchise intended in large measure to be exercised for the public good, the due performance of those functions being the consideration of the public grant, any contract which disables the corporation

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from performing those functions, which undertakes without the consent of the State to transfer to others the rights and powers conferred by the charter, and to relieve the grantee of the burden which it imposes, is a violation of the contract with the State, and is void as against public policy."

The rule announced in the case just cited has been repeatedly followed in subsequent cases decided by the Supreme Court of the United States.

Oregon Ry. & Nav. Co. *vs.* Oregonian Ry. Co., 130 U. S., 1; 32 L. Ed., 837.

Central Transportation Co. *vs.* Pullman Palace Car Co., 139 U. S., 24; 35 L. Ed., 55.

In both of these cases the principles announced upon both propositions discussed in the case of Thomas *vs.* West Jersey R. R. Co., *supra*, are specifically approved.

In Central Transportation Co. *vs.* Pullman Palace Car Company, Mr. Justice Gray, speaking for the court, after reviewing the two previous cases hereinbefore cited, and many others, says:

"The clear result of these decisions may be summed up thus: The charter of a corporation, read in the light of any general laws as are applicable, is the measure of its powers, and the enumeration of those powers implies the exclusion of all others not fairly incidental. All contracts made by a corporation beyond the scope of those powers are unlawful and void, and no action can be maintained upon them in the courts, and this upon three distinct grounds: The obligation of every one contracting with a corporation, to take notice of the

legal limits of its powers; the interest of the stockholders not to be subjected to risks, which they have never undertaken; and above all, the interest of the public, that the corporation shall not transcend the powers conferred upon it by law."

The case of Thomas *vs.* West Jersey Ry. Co., *supra*, is also cited and approved by many inferior Federal courts as well as by many of the State Supreme Courts.

Cass *vs.* Manchester Iron & Steel Co., 9 Fed., 640.

Cumberland Tel. & Tel. Co., *vs.* City of Evansville, 127 Fed., 187.

Davis *vs.* Old Colony R. R., 131 Mass., 258 (270–1).

See also, Small *vs.* Minneapolis Electro Matrix Co., 45 Minn., 264, 47 N. W., 797, and cases therein cited.

In discussing the question under consideration in the case last cited, the Supreme Court of Minnesota uses, in part, the following forceful language:

"We need not inquire how far, or under what circumstances, considerations of public policy and of the general interests of the State may affect the right of a corporation to discontinue the business for which it was created, and to surrender to another corporation its property and the conduct of such business. We do decide that such a surrender of the property, and, so far as possible, of the functions, of a corporation, in order that, while it is to still continue in existence, its business may be carried on by another corporation, to which such transfer is made, would violate the rights of a non-assenting stockholder arising from the contract, implied if not

expressed, in the creation of such an organization; and he would be entitled to have such acts restrained by injunction. * * *

"In the absence of express provision to the contrary, it is to be considered as the law concerning business corporations that their affairs are to be managed in the interest of their stockholders, and by directors or agents appointed by them. This is to be taken to be implied in the contract unless in some manner a different intention is expressed. It is not to be inferred from the pleadings in this case, even if such a thing be possible, that the original purposes of this corporation may have included the project of surrendering its business to some other corporation, to be carried on for a period of years by the latter, under the direction and control of its officers and stockholder, the stockholders of the company thus transferring its busines having no voice in the selection of such officers nor in the management of the business."

It will also be observed that, in Cass *vs.* Manchester Iron & Steel Co., Small *vs.* Minneapolis Electro Matrix Co., and Davis *vs.* Old Colony Rd., *supra*, the corporations, the scope of whose powers was under consideration, were not *quasi* public ones, but strictly private.

In Smith *vs.* Cornelius, 41 W. Va., 59, 23 S. E., 599, it is said:

> "Even a private corporation, unless authorized by charter to do so, cannot lease or dispose of its franchise or its property needful in the performance of its obligations to the State, without legislative consent; and I should think that for a stronger reason a public corporation cannot."

Counsel for appellants quote a short excerpt from the opinion of the United States Supreme Court, delivered by Mr. Justice Gray, in the case of Central Transportation Co. *vs.* Pullman Palace Car Co., 139 U. S., 24, which, as will be observed from an examination of said case, was largely *obiter dictum*, and claim that this supports their contention to the effect that a private corporation may lease or make any other disposition of its property necessary for the performance of the purposes for which it was created to the same extent as a partnership or an individual when the exigencies of its business require; but we submit that said case, when considered as a whole, in no wise modifies but, on the contrary, specifically approves both the propositions announced by said court, per Mr. Justice Miller, in Thomas *vs.* Railroad Co., 101 U. S., 71. This appears not only from the syllabus of said former case, each paragraph of which is made applicable to corporations in general, but from the further fact that both of said propositions so clearly stated and decided in the Thomas case are quoted in full and with approval. It also appears from the fact that, while the case of Treadwell *vs.* Salisbury Mfg. Co., 7 Gray, 393, is cited in support of the excerpt quoted by said counsel, no reference whatever is made to the later Massachusetts case of Davis *vs.* Old Colony Railroad, 131 Mass., 258, the opinion in which was delivered by the same judge while holding the position of chief justice of the supreme court of said State, and wherein, after quoting a portion of the language used by the court in deciding the second proposition determined in the

Thomas case, he says: "But that the decision was not intended to be put exclusively on this ground is manifest from the terms in which it was introduced, as well as from those in which the general doctrine had been already laid down, and from the concluding sentence of the opinion," and, after stating that the guaranty contract which had been entered into by the Old Colony Railroad Co. and the Smith-American Organ Co. was beyond the powers of said Railroad Co., which had been created "by public statutes of the commonwealth for the purpose of constructing and maintaining a railroad and carrying passengers and freight thereon," further adds that "The same reasons are no less applicable to manufacturing and trading corporations, established under general laws, and the purposes of which are required by those laws to be stated in their articles of association."

The following forceful reasoning on the question under consideration, is also found in said opinion, to wit:

> "A corporation has power to do such business only as it is authorized by its act of incorporation to do, and no other. It is not held out by the government, nor by the stockholders, as authorized to make contracts which are beyond the purposes and scope of its charter. It is not vested with all the capacities of a natural person, or of any ordinary partnership, but with such only as its charter confers. If it exceeds its chartered powers, not only may the government take away its charter, but those who have subscribed to its stock may avoid any contract made by the corporation in clear excess of its powers. If

it makes a contract manifestly beyond the powers conferred by its charter, and therefore unlawful, a court of chancery, on the application of a stockholder, will restrain the corporation from carrying out the contract; and a court of common law will sustain no action on the contract against the corporation.

"Every person who enters into a contract with a corporation is bound at his peril to take notice of the legal limits of its capacity, especially where, as in this commonwealth, all acts of incorporation are deemed public acts, and every corporation organized under general laws is required to file in the office of the Secretary of the Commonwealth a certificate showing the purpose for which the corporation is constituted."

It should also be borne in mind that the rights of minority stockholders were not involved in any of the foregoing cases, except Treadwell *vs.* Salisbury Mfg. Co., but the question decided in each case was as to whether or not a contract, partially or wholely executed on one side, was absolutely void so as to be non-enforcible against the adverse party or parties, and in the Thomas case it appears to have been admitted by the counsel representing the plaintiff that "where the act is unauthorized by the charter the shareholder may enjoin its execution."

Furthermore, we think the case of Treadwell *vs.* Salisbury Mfg. Co., *supra*, so cited in support of the said excerpt quoted from the opinion in Central Transportation Co. *vs.* Pullman Pal. Car Co., is clearly distinguishable from the one at bar, as the question there involved was upon the sale of the entire property of the corporation

for the purpose of winding up its business and paying its debts, and the conclusion of the court is based principally upon the facts stated in said opinion, as follows:

> "Upon the facts found in the case before us, we see no reason to doubt that the vote of the majority of the stockholders for the sale of the corporate property, and the closing of the business of the corporation was justified by the condition of their affairs. Without available capital, and without the means of procuring it, the further prosecution of their business would be unprofitable, if not impracticable. Under those circumstances it was in furtherance of the purposes of the corporation to pay their debts, close their affairs and settle with their stockholders on terms most advantageous to them.'

We have never doubted that, in the absence of any statute upon the question, the majority of the stockholders of a corporation, under the circumstances stated in the foregoing quotation, would have the power to dispose of all the corporate property for the purpose of paying its debts, winding up its affairs and dissolving its corporate existence. But in this Territory a two-thirds vote of all the stockholders, followed by an application to the district court, is required to effect such a dissolution (Okl. Stat., Sec. 968, Sub. Div. 3).

Most of the other cases cited by said counsel in support of their contention upon the proposition now under consideration are also clearly distinguishable from the one at bar.

In Price *vs.* Holcombe (Ia.) 56 N. W., 407, there is no

holding to the effect claimed by counsel, that the lease contract referred to would or would not, if definitely made, have been sanctioned by the court over the objection of one or more minority stockholders, and the question involved in the case, like that of Treadwell *vs.* Salisbury Mfg. Co., *supra*, was one of sale for the purpose of winding up the business of the corporation.

In our opinion the case of Traer *vs.* Lucas Pros. Co., 124 Ia., 107, 99 N. W., 290, if it does not (in fact) somewhat qualify the rule announced in Price *vs.* Holcombe, *supra*, clearly holds that it should, in no wise, be extended beyond the peculiar features appearing therein.

It will also be observed that the court, in the case of Traer *vs.* Lucas Pros. Co., *supra*, bases its decision upon the fact that the charter of said corporation gave it power to sell all of its property, and also authorized it to deal in the stock of other corporations," and consequently that "it had the right to sell all of its property for stock in another corporation."

In the case of Freeman *vs.* Seaview Hotel Co., 57 N. J. E. 67, 40 Atl., 218, it is decided that: "A hotel company's charter authorized it to purchase ground and maintain an hotel at or near Atlantic City, which it did. Its business became unprofitable at its location, and it sold the property and purchased at another place in the city. Held, that the company could make the purchase, there being nothing in its charter restricting it." But it needs no argument to show that the foregoing holding is based upon quite a different state of facts from that presented in the case at bar.

In State *vs.* Western, Etc., Co., 40 Kan., 96, 19 Pac., 349, it is specifically stated that "There is no stockholder or creditor intervening or objecting, therefore we are not called upon to consider the rights of such parties." And in Morisette *vs.* Howard (Kan.), 63 Pac., 756, it is said that "It appears to have been done in good faith, with the consent of the stockholders; and we see no reason why a mere trading corporation, like this one, cannot close up its business in the manner pursued in this instance."

The case of Miners' Ditch Co. *vs.* Zellerbach, 37 Cal., 543, goes off principally on the question of estoppel, the court holding that a corporation would not be heard to allege the invalidity of the sale of its entire property after all of its stockholders having received the full compensation agreed upon and having, without complaint, stood by and permitted the property to pass into the hands of innocent third parties, the last clause of the syllabus of said case reading as follows: "Conceding it to be unlawful for a corporation to make a sale of all its property to another corporation, and receive in payment therefor the stock of the grantee to be distributed among its own stockholders, yet, if such sale is made, and the contract fully executed, the corporation itself can not recover back the property sold, or set aside the contract on account of its illegality;" and in the body of the opinion in said case the court, commenting upon and quoting from an English case, uses the following language, to wit: "So the same justice recognizes the difference between cases where stockholders are suing in

equity to restrain the misappropriation of the corporate funds, and a suit on a contract against a corporation by a stranger. In these suits in equity the members of the corporation, in their individual capacity, are considered to have rights *inter se* analogous to those of partners *inter se*, and the act incorporating the the company is considered to be analogous to a partnership deed. * * * The mere circumstance of a covenant by directors in the name of the company, being ultra vires as between them and the shareholders, does not necessarily disentitle the covenantee to sue upon it." Further on in the opinion, which is a very elaborate and well considered one, the California supreme court says:

> "From the cases cited it very clearly appears that the question as between stockholders and the corporation is a very different one from that which arises between the corporation itself and strangers dealing with it. * * * The enterprise of the Miners' Ditch Co. may have proved unprofitable, and rendered it necessary to dispose of its assets and wind up the concern as the only means of avoiding insolvency. * * *
>
> "Although the object for which it was formed was to construct a ditch and convey water for sale to miners, and for mechanical purposes, there was no obligation resting on the corporation to pursue this object after it became evident that the enterprise would be unprofitable and result in insolvency or loss. When such a result appears to be unavoidable, obviously the only mode by which the interests of the parties and of the public could be subserved would be to dispose of its assets in the most advan-

tageous way, and pay off its debts, with a view to winding up the affairs of the corporation with the least possible loss."

The case of Tanner *vs.* Lindell Ry. Co., 180 Mo., 1, is also determined largely upon the question of estoppel and upon the provisions of certain special acts of the legislature authorizing the consolidation and transfer of property complained of, the first clause of the syllabus reading as follows: "An injunction will not be granted, at the suit of minority stockholders of a street railway company to restrain the company from selling its assets to, and consolidating with, another company, over such stockholders' protest, where such minority stockholders by their own laches have made it impossible to grant the injunction without inflicting serious injury on the parties to be enjoined." It will also be observed that the corporation making the conveyance sustained in said case was a *quasi* public one, and it has not been contended even by counsel for appellants in the case at bar that such a corporation can legally make such conveyance over the objection of a minority stockholder without specific legislative authority so to do.

The opinion in the case of Berry *vs.* Broach, 65 Miss., 450, 4 So., 117, as well as the statement of facts, is very brief, but shows that the sale of the property in said case was for the purpose of winding up the affairs of the corporation; and the decision seems to be based principally upon the fact that the plaintiff, having participated in the meeting of stockholders at which the sale was authorized and voted for same, was thereafter estopped to allege its invalidity.

The case of Doyle *vs.* Leitelt, 97 Mich., 278, 56 N. W., 553, is in no respect in point upon the question under consideration.

The case of Byrne *vs.* Schuyler Electric Mfg. Co., 65 Conn., 336, 31 Atl., 833, we regard as a very strong one in favor of the contention of appellees in the case at bar. It is very correctly declared in the opinion of the court, per Chief Justice Andrews, in said case, that: "The charter of a corporation is its enabling act. A corporation is empowered to do those things only for which it is created, and to do them in the manner specified in the charter. This is especially the rule in the case of private trading or manufacturing corporations." It is also therein held that: The fact that a stockholder is not injured by an *ultra vires* contract of a corporation, to which all the other stockholders have consented, does not prevent his maintaining an action to enjoin its performance."

There is no question of the sale or lease of property involved in the case of Levering *vs.* Bimel, 146 Ind., 545, 45 N. E., 775, and we presume the reason the case is cited by counsel for appellants is because of the declaration therein contained that: "A private corporation, unless restrained by statute, may legitimately deal with its property in a manner similarly as an individual deals with his"; but if this language is intended to apply generally to all transactions, it is so manifestly contrary to the overwhelming weight of authority upon the question as to render further comment thereon unnecessary.

The case of Skinner *vs.* Smith, 134 N. Y., 240, 31 N.

E., 911, is similar to the one last above cited in that no question of the sale or lease of property is involved and is evidently cited because of the following declaration therein contained, to wit: "The right of a manufacturing company to discontinue operations when they have become unprofitable, for the purpose of protecting shareholders from further loss, does not admit, we think, of doubt." We have no disposition to dispute this proposition and, as before seen, our statute has made specific provision for this very thing but, as before stated, this is quite a different matter from leasing the entire physical property of a corporation, together with its good will, as a matter of speculation and not for the purpose of paying its debts and winding up its affairs.

The case of Hancock *vs.* Holbrook, 9 Fed., 353, is very clearly distinguishable from the one at the bar, on the grounds just stated, as is also that of Phillips *vs.* Providence Steam Engine Co. (R. I.), 43 Atl., 598, and Rothwell *vs.* Robinson, 44 Minn., 538, 47 N. W., 255. The rule on this proposition, stated in Holmes & Griggs Mfg. Co. *vs.* Holmes & W. Metal Co. (N. Y.), 27 N. E., 831, is probably the correct one, and is as follows: "The plaintiff had the right, with the consent of its stockholders, to sell its plant and retire from business; and it appears from the evidence in this case that the consent of all the stockholders was given to the sale that was made."

In the case of Sewell *vs.* East Cape May Beach Co., 50 N. J. Eq., 717, 25 Atl., 929, the decision of the court, holding the sale of the entire property owned by the defendant valid, is largely based upon the finding that

"The purchase and sale of real estate is expressly contemplated in the corporation of this company. It does not buy and hold and improve real estate simply as an incident to its corporate existence, but it was really created for the purpose, so to speak, of speculating in the sale of lands. This being so, it is necessarily within the power of the directors, to whose management the affairs of the company are entrusted by law, to say on what terms and credits the property of the company shall be disposed of."

We regard the cases of Plant *vs.* Macon Oil & Ice Co., 103 Ga., 66, 30 S. E., 567, and Bartholomew *vs.* Derby, 69 Conn., 521, 38 Atl., 45, as in point supporting the contention of counsel for appellants where the business affairs of a corporation are in such condition as to render its further operation, by and through it own directors, practically impossible without great loss to its stockholders. But we insist that the holding of these two cases is contrary to the decided weight of authority upon the proposition, and further that even if this were not so, no such emergency as that required to come within the rule announced in said cases is disclosed by the evidence in this case at bar, but on the contrary the undisputed evidence in this case shows that the Shawnee Compress Co. had never been operated at a loss but that its net earnings for each of the past three compressing seasons were several thousand dollars.

Mr. J. M. Aydelotte, the president of said company for several years prior to the special meeting of stockholders held on April 24, 1905, on his direct examination by

counsel for defendants, testifies, upon the question of the earnings of said plant, in part as follows:

"Q. During the four years that you were connected with it, did the Compress Company earn anything?

"A. Yes, it earned a little money each year.

"Q. How much?

"A. The year 1903, I think it earned about $5,000.00.

"Q. Net or gross?

"A. Net. The season of 1903 and '4.

"Q. What did it earn the preceding year?

"A. And the season of 1902 and '3 I think, I think it was $4,300.00" (R., 108, 109), and on the question of the financial condition of said company, he further testifies in part, as follows:

"Q. What was its condition with reference to being able to pay its indebtedness?

"A. Well, they had no funds in hand to pay the notes that they owed the Webb Compress Company. * * *

"Q. At the time that you resigned as president, you also ceased to be a stockholder, did you?

"A. Yes, sir, a few days after that.

"Q. Now, about that time, what was the condition of the Compress Company, with reference to being pressed by its creditors or not?

"A. It was pressed at one time by the Webb Compress Company for the $2,250.00 note, and they took the matter up with them and they extended the time. * * *

"Q. Well, the Shawnee National Bank, were they insisting or not, on their money?

"A. Yes, sir.

"Q. What had they been doing with reference to trying to get their money?

"A. They were urging the stockholders to make some disposition and pay the note as soon as possible; they never did crowd them or threaten to bring suit or anything. We urged them to make arrangements to pay it as soon as possible; that we needed the money and didn't care to carry it longer." (R., 109.)

Mr. Aydelotte further testifies that the indebtedness of the company was about $18,000.00 (R., 110), and that he valued the plant to B. L. Anderson at $35,000.00, and also that the indebtedness of said plant to the Webb Compress Co., as well as its aggregate indebtedness, had been reduced (R., 114); and Mr. Beatty (the principal witness for defendants), testifies that the net earnings of the plant for the season of 1904–'5 was more than $7,386.-05 (R., 104); and that same was worth, in his opinion, $35,000.00 (R., 114).

In addition to the foregoing undisputed testimony, both F. E. and B. L. Anderson testified that, in their opinion, there would have been no material difficulty in procuring a new loan to take up the second mortgage indebtedness and in procuring any reasonable further extension of the time of payment of the first mortgage indebtedness, and that they could and would have procured the money necessary to take up both liabilities if authorized by the stockholders and directors of said company so to do and in order to prevent any foreclosure proceedings (R., 154, 155, 160, 161, 166).

We submit that, in our opinion, no single decision or authority can be found which will justify the leasing of the property of the Shawnee Compress Company under the state of facts shown by the foregoing testimony, most of which, as before seen, is undisputed, even conceding (for the sake of the argument) the rule contended for by counsel which is stated on page 48 of their brief, as follows:

> "It is true that in many instances, and perhaps all, the courts require some exigency to exist which imperils the business or threatens the property of the private corporation before permission is granted to lease its entire plant."

The evidence discloses that at the time the Shawnee Compress Company was incorporated the value placed upon its assets was $11,000 and the capital stock was placed at that amount, 110 shares at $100 per share. Later the capital stock was increased to $16,000, but it is not shown anywhere that any part of the increase was paid to the corporation by the holders thereof. Fortunately there is no doubt about what occurred when the capital stock was increased from $16,000 to $50,000. On the 10th day of June, 1901, the certificate signed by J. M. Aydelotte, A. M. Graves, A. E. Nelson, C. J. Benson, H. T. Douglas, D. W. Cheatham and John M. Butcher, among other things provided that "It being understood and agreed that the increase of Thirty-four Thousand (34,000) Dollars is to be divided or apportioned pro rata among the present stockholders, according to the amount of stock now held by each * * * the following stock-

holders were present, represented as follows: J. M. Aydelotte, 30 shares, H. T. Douglas, 5 shares, C. J. Benson, 35 shares, A. E. Nelson, 28 shares, A. M. Graves, 19 shares, O. W. Cheatham, 19 shares, Jno. W. Butcher, 19 shares.

It therefore must appear that at least $34,000 of the subscribed stock had not then and never was paid up. This is important and interesting in view of the contention of counsel for appellants as to the existence of exigency in this case. Section 975 of Wilson's Oklahoma Statutes provides that—

> "Each stockholder of a corporation is individually and personally liable for the debts of the corporation to the extent of the amount that is unpaid upon the stock held by him."

Section 986 of said statutes relating to assessments of stock provides:

> "First, If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be made for the full amount unpaid upon the capital stock; or if a less amount is sufficient then it may be for such a percentage as will raise that amount."

Therefore at least the sum of $34,000, if needed, was available to pay obligations of the corporation, but no such sum was necessary. No steps were taken to comply with the plain provisions of the statute relating thereto. This in connection with the fact that the net

income of the Shawnee compress for the preceding year was $7,386.05, and that within that year, according to the testimony of appellant Beatty, improvements costing nearly $5,000 had been added which would increase the efficiency and capacity of the plant about one-half With a net income of about one and one-half times the amount of the rental agreed upon, and with a capacity twice as great for future years, no exigency could or did exist such as would warrant the action taken, even if the cases relied upon by counsel are applicable to this case. The exigency which caused the execution of the pretended lease is one of an entirely different sort, and doubtless had a sinister if not a corrupt motive back of it.

In this connection, we call special attention to the case of Parsons *vs.* Tacoma Smelting & Refining Co. (Wash.), 65 Pac., 765, the facts in which are more similar to those presented in the case at bar than any other which we have been able to find, and wherein the Supreme Court of the State of Washington, upon said facts and upon statutory provisions also very similar to those in this Territory, held, in effect, that such a contract of lease is *ultra vires*, and that, in any event, no such emergency existed as to authorize its execution, and thereupon reversed the judgment of the trial court and declared the lease contract void. In that case, as in this, no special findings of fact were made by the trial court, which, after hearing the testimony, entered a decree dismissing the action.

The testimony therein showed that the stock had been

issued to the subscribers upon payment of fifty per cent. of its par value, which is evidently a much greater per cent. than was ever paid into the treasury of the Shawnee Compress Co. by the holders of its capital stock. At any rate, there is no testimony in the record in this case showing the payment of any amount by the subscribers to the capital stock, and it is quite certain that nothing was paid for the increase in the amount of said stock from $11,000 to $50,000, if in fact any considerable portion of the original $11,000 was paid up. Otherwise, even if as much as fifty cents on the dollar of the increase in the capital stock above the original $11,000 had been paid in, there would have been ample to discharge the entire indebtedness of said company.

It is also shown in the case last cited that "The resolution of the meeting of the stockholders of the Tacoma Smelting & Refining Co. recites as reasons for the execution of the lease that the corporation was without sufficient capital to conduct its business at a profit, or in such a manner as to pay its operating and incidental expenses without drawing upon its capital, and that it was compelled to liquidate its affairs unless capital could be raised; that it had made diligent efforts to raise such capital without success until recently, when, through the manager, Mr. Rust, it had been able to arrange so that the business of the company could be continued and the plant and property of the company preserved and maintained in good order and condition, upon the terms mentioned in the lease."

What a similar ring this has to the resolutions pre-

pared by the leading counsel for appellants in the case at bar and presented to and adopted by Messrs. Beatty and Stubbs, assuming to act as a majority of the board of directors of said Shawnee Compress Co. at the meeting held on May 1, 1905, being the last one prior to the commencement of this action (R., 23–4). It was also shown by the testimony in that case that "about 1892–93 it sustained considerable loss because of falling values in silver and lead. What the aggregate losses were is not stated with precision, but the company had borrowed about $50,000, for which it was liable, and it had no funds on hand."

In discussing the scope of the powers of the corporation in that case, the Supreme Court of Washington say, in part:

> "The objects of the incorporation of the Tacoma Smelting & Refining Co. are stated in its articles to be the building, acquiring, owning and constructing and operating of works and buildings for the purpose of milling, reducing, smelting and refining gold and silver ores, purchasing and handling of such ores, advancing money thereon, and acquiring, purchasing, owning and operating of such appliances and adjuncts as may be necessary or convenient for the prosecution of the business; the purchasing, owning and acquiring of mines and all other lands that may be necessary or convenient in operating said business; and generally to do all other acts which, in the judgment of the trustees, may be proper or essential to the successful carrying on of the purposes and objects of the corporation. It is apparent that no express power to lease all the property

of the corporation is contained in the article. The articles of incorporation, as observed, are a contract. Each individual stockholder assumed the liability of the payment of his subscription to the capital stock in money or money's worth, and the corporation engages to carry on the business for which it is organized. * * * The stockholders have equal rights to participate in the profits of the business according to the value of the stock owned by each, and each stockholder is entitled to the protection of his charter rights. He may insist that the business be conducted according to the articles; and, while the wishes of the majority of the stockholders are potent in the administration of all the business of the corporation, and, where exercised without fraud or oppression are controlling upon the minority, yet the action of the majority can not prevail where it impairs the contract right of a stockholder. The reasons urged for the necessity of the lease in question was that the Tacoma Smelting & Refining Co. was unable to procure capital to conduct its business efficiently; that it had liabilities which were pressing and had no available funds to make payments.

"It may be well to suggest an inquiry into the condition of the corporation at the time the proposal to lease the property was made. It had a plant of considerable value. It apparently exceeded in value the liabilities, and, while the amount is not definitely shown, it appears that a large portion of the subscriptions to the capital stock had not been paid. Mr. Rust testifies that some of the subscribers to the capital stock had been requested to advance capital to con luct the business, but that no such advancements had been made. It is nowhere intimated

that the board of trustees had attempted to exercise its appropriate powers to collect the unpaid subscriptions to the capital stock. * * * It cannot be concluded from the record before us whether other action by the board of trustees might not keep the corporation a going concern, and enable it to perform the objects of its organization."

In concluding the argument upon this question, said court, per Chief Justice Reavis, uses the following language:

"A distinction may be observed between a sale of all the property and a lease of all the property. In that of a sale no further liability rests upon the stockholder. The corporation is, in fact, discontintinued. In that of a lease the business is discontinued and the profits derived by the lessee, but the stockholders' obligations may continue. Under our statutes the corporate existence is limited in time. This was not usual in the older cases. And, further, Section 4275, 1 Ballinger's Ann. Codes & St., contains the complete procedure for the dissolution of the corporation at the will of two-thirds of the the stockholders. These statutes apparently contemplate the conduct of the business for which the corporation is organized through its own appointed agencies, or, at the choice of two-thirds of the stockholders, a dissolution. It is true, an insolvent corporation may make an assignment for the benefit of its creditors against the will of a non-consenting stockholder, and probably any appropriate proceedings in equity might be taken to relieve a failing corporation by such disposition of its property as should be equitable which did not vio-

late any contractual relations of the stockholders." And further on in the opinion of said case, while discussing another question involved therein, that court very correctly says: "It has always been true that corporations have only such powers as are granted to them by the State, and, when a corporate act is questioned, the affirmative is upon the corporation to show its authority. It is not entirely correct to draw a right line between corporations which are *quasi* public and another class designated as private. The State will more readily interfere, perhaps, when the duty of a corporation is public than when it is merely a trading or manufacturing, or commercial company; but we apprehend that the rights of stockholders are equally protected in both."

It will also be observed, from an examination of the opinion just quoted, that the court therein cites and discusses at some length all of the cases cited by counsel for appellants, and some others, bearing upon the question of the power of a private corporation to lease its property necessary to the performance of the purposes for which it was created, and distinguishes most of them. It will also be observed that the provisions of our statute relating specifically to corporations organized "for mining, manufacturing, and other industrial pursuits," which certainly includes those organized for the compression of cotton, are practically identical with those of the State of Washington cited in said opinion, as controlling upon the question under consideration. (See Secs. 1071–4, page 266, Okl. Stat., 1893.) Section 1072 requires, among other things, that: "The purposes for which every such corporation shall be formed must be distinctly and defi-

nitely specified in the articles of incorporation;" and Section 1073 requires that: "Regular books of accounts of all the business of such corporations must be kept, which, with the vouchers, shall be at all reasonable times open for the inspection of any of the stockholders; and as often as once in each year a statement of such accounts shall be made, by order of the directors, and laid before the stockholders." This certainly contemplates that the business of every such corporation shall be conducted through its own managing officers and not farmed out to some other corporation or individual. And Section 1074 provides, among other things, that: "The stockholders of any corporation formed for the purposes mentioned in this article shall be jointly and severally liable, in their individual capacities, for all debts due to mechanics, workmen and laborers employed by such corporation;" hence, as suggested by the court in Parsons *vs.* Tacoma Smelting & Refining Co., *supra*, the obligations and liabilities of the stockholders may be continued under a lease contract notwithstanding they would have no voice in the management of the affairs of the corporation.

Attention is desired to the language used in the case of Renfrow *vs.* Grimes, 6 Okla., 608, 613–14, to-wit:

"We think that plaintiffs, in their official capacity as members of this board, can no more enter into a contract (which will be valid and binding) beyond the scope of the authority conferred upon them by statute than can a public or private corporation; and no rule of law is better settled than that such corporation can only execute a valid lease or other contract when authorized so

to do by statute," citing cases, and, among others, that of Thomas *vs.* West Jersey R. R. Co., 101 U. S., 71, and then quoting therefrom the following excerpt, to-wit:

> "We take the general doctrine to be in this country, though there may be exceptional cases and some authorities contrary, that the powers of corporations organized under legislative statutes are such and such only as those statutes confer, thus, we think fully approving the doctrine laid down in the Thomas case upon the question of the limitation of powers of corporations in general, regardless of whether they are strictly private or such as are designated *quasi* public."

In concluding upon this branch of the case, we desire to further submit that, under the undisputed evidence, it cannot be said that the lease contract with the Gulf Compress Co. would even prove as remunerative to the local company as the operation of its plant through its own regularly selected officers; that the indebtedness of said plant was less than it had ever been since the purchase of the new press from the Webb Compress Co. and the giving of notes in payment therefor in the sum of $22,000.00, and that there is no shadow of doubt but what any reasonable additional extension of the time of payment of the balance remaining due on this obligation could have easily, if it had not already, been secured by the payee. See letter of Robert D. Webb, of March 17, 1905, to Mr. Beatty, which reads as follows: "Yours 13th, and will let the note extend over, and trust that your expectations in regard to dividends earned will be realized" (R., 183). Consequently, the only emergency

requiring the hasty action taken in the attempted consummation of said lease contract, on the part of Mr. Beatty and his associates, was in the personal affairs of Messrs. Beatty and Stubbs. Beatty testified that in April, 1905, when he went to Memphis to see Hanson it was figured by them that the Shawnee Compress Co. had made a net gain of about $7,000 for the previous season (R., 88). Beatty testified there was a net gain of $7,386.05 above insurance and taxes paid for the year ending December 31, 1904 (R., 104 and 105). It therefore follows that said pretended lease was *ultra vires* and void at the instance of the appellees.

III.

The said lease contract is void at the suit of the appellees, being non-assenting stockholders, for the reason that the same was not executed, by the parties assuming to represent the Shawnee Compress Company, as its managing officers for the best interests of said company, but to advance their own private interests.

The testimony of W. H. Beatty, who assumed to represent the Shawnee Compress Co. in practically all the negotiations leading up to the submission of the lease proposition by Mr. C. C. Hanson, on behalf of the Gulf Compress Co., and who was the moving spirit among the stockholders of the said former company in causing the pretended execution of said lease contract, shows very clearly, we think, that his principal purpose in securing the execution of same was to procure a private loan on the stock owned by himself and T. F. Stubbs, and to reduce their indebtedness to the Shawnee National Bank.

Concerning the motive which prompted the actions in this regard, Mr. Beatty testified, in part, as follows:

> "Q. Now in this state of affairs, what did you then do relative to the Shawnee Compress Company; did you go to Memphis to see Mr. Hanson some time in April?
>
> "A. I went to Memphis some time in April for the double purpose of preventing the press property from being sold as a whole and from its consequent bad effects on my holdings as a stockholder, some time in the early part of April; I don't remember the date" (R., 90).

This testimony follows that given by said witness on his direct examination as to the financial condition of said Shawnee Compress Co., and, more particularly, showing that the plant had been advertised for sale for the payment of the last half of the taxes for 1904, then delinquent, but when he is compelled, on cross-examination, to state the facts about this matter, it is shown that the cause of these taxes becoming delinquent was the mistake made by himself, as secretary of said company, in showing, on the books of the company, that said taxes had already been paid, and that none of the appellees had any knowledge of the fact that said taxes had not been paid (R., p. 99); and the undisputed evidence further shows that the advertisement of said plant for sale was not in April, as first stated by Mr. Beatty, but in the early part of September, 1905.

Further testifying as to his own financial situation, and the motives actuating his efforts to procure the execution of said lease, he says:

"Q. Mr. Beatty, you say that you told Mr. B. L. Anderson that you and Mr. Stubbs had bought enough stock to make you majority stockholders?

"A. I did.

"Q. Then how much stock did you and Mr. Stubbs own prior to the purchase you refer to?

"A. At the time of the meeting; at that time we held 260 shares.

"Q. How much did you own prior to the time you made the purchase?

"A. 133 shares.

"Q. Now, you did not pay for it, did you?

"A. I did.

"Q. You had it all hypothecated, did you not?

"A. Had it all hypothecated, yes, sir.

"Q. And you had money enough to go on and buy this other stock?

"A. Yes, I had to arrange that at the Shawnee National Bank.

"Q. The Shawnee National Bank had an option on that stock for ten days, did they not?

"A. I don't remember the time, but I bought it from Mr. Douglass on about the 10th or 11th day of April. * * *

"Q. Did you pay Mr. Nelson anything?

"A. No, sir; I did not deal with Mr. Nelson.

"Q. How much did you pay Mr. Douglas?

"A. I paid him $25 a share; I don't remember how much, I remember too——

"Q. Did you pay him cash for it?

"A. Yes, sir.

"Q. Did you pay him by check or how?

"A. I paid Mr. Douglas by check, on about the 10th or 11th, the day that the date shows on that stub.

"Q. Did you have money in the bank to pay for it or borrow the money?

"A. I borrowed the money (R., 96–7). * * *

"Q. Your purpose in buying this stock, Mr. Beatty—one of the purposes was to help consummate the negotiations for this lease, was it?

"A. It was so as to protect my minority interest.

"Q. Wasn't it also to carry the lease of the property?

"A. If necessary to carry the lease of the property.

"Q. You had been over to see Mr. Hanson about making the lease?

"A. I was going to buy the stock—the five years' lease would show me its value—I hadn't made any trade.

"Q. Yes, but you knew what proposition he would make, didn't you?

"A. No, I didn't know what proposition he would make. His letter there is dated the 18th of April, and I bought that stock I think on the 11th of April, as will be shown by telegrams from the Western Union office.

"Q. Telegrams between whom?

"A. The parties in interest.

"Q. You and whom?

"A. The telegrams were between me and the party with whom I could make any arrangement. I notified Mr. Hanson on the 11th of April that I had bought the stock.

"Q. You had arranged with him to get the money while you were there?

"A. I had arranged with Mr. Benson c the Oklahoma National Bank to get it at 12 per cent. and Mr. Hanson had offered to let me have it at 8 per cent.

"Q. Who did you get it from?

"A. I got it from Mr. Douglas temporarily, and I got it from Mr. Hanson finally; he had said that he would lend it to me, or that he would provided the investigation of his auditor was satisfactory.

"Q. Was that when you went over to see Mr. Hanson, about what date?

"A. About the first week in April.

"Q. You had discussed the matter of making the lease with him?

"A. I had discussed the matter of getting him to make us a proposition.

"Q. And you had discussed the matter of his advancing you money to buy this stock with?

"A. Which had not been agreed to.

"Q. And you had been talking of your stock, the shares that you had and the shares that you were going to get, and his making you this loan?

"A. Yes, but it had not been agreed to.

"Q. And then you came back and made your definite arrangements for the money about the 11th of April by wiring Mr. Hanson?

"A. No, sir; my telegram simply stated that I had bought the stock. I had made that arrangement with Mr. Douglas.

"Q. Temporarily?

"A. Yes, sir.

"Q. And it was also understood between you and Mr. Hanson that, with this additional stock, if you got it, you could force that lease?

"A. That was the understanding (R., 97–8).

* * * * * * *

"Q. He (Hanson) wanted to investigate the financial condition of the company to determine whether he would make you a loan?

"A. Yes.

"Q. How long was the auditor in checking up to determine whether he would make you the private loan, and make this $6,000 loan?

"A. He checked it up the day he was there and made his statement.

"Q. You had a stockholders' meeting on the 24th and Mr. Hanson and his auditor were there the next day?

"A Either the next day or the next after that (R., 101).

* * * * * * *

"Q. How many letters did you write to Mr. Hanson or the Gulf Compress Co.?

"A. A very few; two or three.

* * * * * * *

"Q. How many wires did you send to Mr. Hanson in regard to the company's affairs and your own affairs?

"A. I sent him very few in regard to the company's affairs. My own affairs I don't remember.

"Q. Well, prior to the time that you say you bought these 133 shares of stock of Mr. Nelson, how much were you indebted to the Shawnee National Bank, for which you had stock pledged as collateral security?

"A. I think it was about 30 cents on the dollar.

"Q. You mean you pledged your previous stock at about 30 cents on the dollar?

"A. That is my recollection.

"Q. Then you got this from Nelson at 25 cents and borrowed all that money from the bank?

"A. Yes.

"Q. Now, wasn't that loan, that last loan, with the distinct understanding that the bank should carry it temporarily, and that Mr. Hanson would take it up?

"A. They had my word that I could make that arrangement.

"Q. How much did Mr. Hanson advance you?

"A. $7,500, which was less than I had borrowed from the bank to pay the Nelson stock; less than the amount that I borrowed from the bank, and that I got to pay for the Nelson stock.

"Q. How much more did you owe the bank that Mr. Hanson took up?

"A. I don't know; I don't remember the amount, except that I know that that did not clean up the entire amount.

"Q. You don't know, can't you approximate it?

"A. No, sir, because I had other collateral with them; I had some mules and a crop, a potato crop, and other collateral.

"Q. You pledged how many shares of stock to the Hanson Company?

"A. Three hundred and two (R., 104).

While Mr. Beatty would not specifically admit that it was understood with Mr. Hanson that the personal loan would not be made to himself and Mr. Stubbs unless the Gulf Compress Co. succeeded in procuring a lease from the said Shawnee Compress Co. (R., 104), it is quite apparent that this was the understanding and Mr. Hanson, when pressed for a definite statement as to whether he would otherwise have made said personal loan, testifies as follows:

"Q. Do you mean to say that you have made that contract with Mr. Beatty, and would have carried his stock without having a lease contract, just the same?

"A. I would not have specially cared for it, unless we were interested in a way so that we knew that the property was being managed, and how it was being managed; it was one inducement that I had in offering to make the loan.

"Q. The loan to Mr. Beatty personally?

"A. Yes, sir." (R., 70.)

It is evident this arrangement between Mr. Hanson and Mr. Beatty as to the personal loan of $7,500 made by Mr. Hanson to Beatty and Stubbs had been made prior to the special meeting of the stockholders held on April 24, 1905. Mr. Hanson testified: "I told Mr. Anderson that Mr. Beatty, of Beatty & Stubbs, had said to me that they had had a hard season, and that they wanted to realize some money on their stock, and I asked him for his idea regarding the value of that stock, *as they were negotiating with me for a loan.*" (R., 132.) There is no conflict of testimony on this point.

In view of this testimony we submit that it is clearly shown that both Messrs. Beatty and Stubbs had such a personal interest in the matter of securing the execution of the lease contract under consideration as to render the lease contract void, same having been authorized by their votes, as alleged members of the board of directors of the Shawnee Compress Co. (R., 15, 16).

"A director cannot with propriety vote in the board of directors upon a matter affecting his own private interest any more than a judge can sit in his own case; and any resolution passed at a meeting of the directors at which a director having a

personal interest in the matter voted will be voidable at the instance of the corporation or the shareholders, without regard to its fairness, provided the vote of such director was necessary to the result."

. . 10 Cyc., 790.

"The question presented for our consideration and decision is, can a director in an incorporated company become a contractor with the company, or can he have any personal and pecuniary interest in a contract between the company of which he is a director and third person? We think the law is well settled, both in England and in this country, that he cannot."

Port *vs.* Russell, 36 Ind., 60. Further on, in the opinion, the court quotes with approval the following language used by Lord Cransworth in deciding the case of the Aberdeen Railway Co. *vs.* Blakie, 1 Macq. Ap. Cas., 461, to wit:

"A corporate body can only act by agents, and it is, of course, the duty of those agents so to act as best to promote the interest of the corporation whose affairs they are conducting. Such an agent has duties to discharge of a fiduciary character toward his principal; and it is a rule of universal application, that no one having such duties to discharge shall be allowed to enter into engagements in which he has, or can have, any personal interest conflicting, *or which possibly may conflict*, with the interests of those whom he is bound to protect. So strictly is this principle adhered to that no question is allowed to be raised as to the fairness or unfairness of a contract so entered into. It obviously is, or may be,

impossible to demonstrate how far, in any particular case, the terms of such a contract have been the best for the *cestui que trust* which it was possible to obtain."

See also, Curtin *vs.* Salmon River Hydraulic Gold Mining, etc. Co., (Cal.), 62 Pac., 552.

Bassett *vs.* Fairchild (Cal.), 64 Pac., 1082.

Ward *vs.* Davidson (Mo.), 1 S. W., 846.

3 Clark & Marshall on Private Corporations, Sec. 760.

From the rule laid down by the foregoing authorities, which is undoubtedly correct, it is apparent that, if the vote of Messrs. Beatty and Stubbs, or either of them (either at the stockholders' or directors' meeting) in favor of said lease contract, might have been caused by a desire to procure from Mr. Hanson, or the Gulf Compress Co., a personal loan of $7,500, then said contract is voidable at the election of appellees and this regardless of any showing as to the fairness of said contract or its being for the best interest of the stockholders of the said Shawnee Compress Co., and, in this connection, we candidly submit that we believe it cannot be judicially declared that their said private interest in this matter could not possibly have influenced their votes.

Furthermore, the testimony shows the plant was being much more advantageously operated by the Shawnee Compress Company, and was making a much larger net income than is derivable under the said lease, as has been heretofore shown.

IV.

The judgment of the Supreme Court of Oklahoma should also be sustained upon the ground that the pretended proceedings attempted to be taken at the special stockholders' meeting of Shawnee Compress Company of April 24, 1905, especially those relating to the authorization of a certain committee to close a lease contract with the Gulf Compress Company, and to the purported amendment of the by-laws of said company reducing the number of directors thereof to three, and the pretended election of only three members of said board by resolution, are illegal and utterly void; and the pretended proceedings had at the subsequent special meetings of said pretended board of directors are illegal and void.

It is shown by the undisputed pleadings and evidence that on the 13th day of April, 1905, J. M. Aydelotte, as president of the Shawnee Compress Co, sent the following notice to the various stockholders thereof, to wit: "A special meeting of the stockholders of the Shawnee Compress Co. is hereby called to be held at the company's office in Shawnee, Monday, April 24, 1905, at 11:00 A. M." (R., 180).

That at said meeting of stockholders, without any previous notice to the appellees, the proposition of leasing the entire property, good will, etc., of the Shawnee Compress Co. to the Gulf Compress Co., was presented by Mr. Beatty, as secretary of said former company, and that, over the protest and against the votes of appellees a res-

olution was carried appointing a committee of three, composed of F. E. Anderson, C. J. Benson and W. H. Beatty, and instructing them to negotiate and close a lease contract with the Gulf Compress Co. for a period of five years, at the stipulated rental value of $6,000 per annum (R., 15). Now we insist that this proceeding is void and that the stockholders, if all had assented thereto, could not authorize said committee to make a lease contract disposing of the corporate property of said company.

Okla. Stat., 1893, Sec. 956, p. 233 (Wilson's Stat., Sec. 968).

Gashwiler *vs.* Willis, 33 Cal., 12.

It is also shown by the undisputed pleadings and evidence that, at said stockholders' meeting, certain resolutions were adopted purporting to amend the by-laws of said company so as to reduce the number of its board of directors to only three and, in effect, to declare the previous annual election of directors void and to oust all of the nine persons so elected at said previous annual meeting of the stockholders and to elect, as such board of directors, a board consisting of only three members, T. F. Stubbs, F. E. Anderson and W. H. Beatty, said pretended election being by a mere resolution and not by ballot (R., 15, 203).

We most earnestly insist that these pretended proceedings were utterly void, as being in direct conflict with several provisions of our statute and contrary to well established rules of law laid down by an almost (if not quite) unanimous line of decisions.

Section 932, Okl. Stat., 1893 (Wilson's Stat., 943), provides, among other things that, "Articles of incorporation must be prepared setting forth ; * * * Fifth : The number of its directors or trustees, and the names and residences of such of them who are to serve until the election of such officers and their qualifications."

Sec. 951 (W. S., 963) provides that a corporation may, by its by-laws, where no other provision is especially made, provide a number of matters regulating the time, place and manner of calling and conducting meetings, etc., which will be binding upon the corporation, but, of course, does not attempt to authorize the corporation to fix the number of its directors by by-laws, as that must be done by the articles of incorporation, as seen by the provisions of the previous section.

Sec. 952 (W. S., 964) provides, among other things, that " The by-laws may be repealed or amended, or new by-laws may be adopted at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed capital stock or by two-thirds of the members."

Sec. 953 (W. S., 965) provides that, " The directors of a corporation must be elected annually by the stockholders or members and, if no provision is made in the by-laws for the time of election the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as provided in Section 675."

Sec. 954 (W. S., 966) provides that, " At the first meet-

ing at which by-laws are adopted, or at such subsequent meeting as may then be designated, directors must be elected to hold their offices for one year, and until their successors are elected and qualified."

Sec. 955 (W. S., 967) provides that, "All elections of directors must be by ballot, and the vote of stockholders representing the majority of the subscribed capital stock, or of a majority of the members, is necessary to a choice."

Sec. 960 (W. S., 972) provides that, "No director shall be removed from office, unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held, after notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing and addressed to the secretary, who must thereupon give notice of the time, place and object of the meeting, and by whose order it was called."

Sec. 964 (W. S., 976) provides that "When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if it had at a meeting legally called and noticed. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at a regular meeting of the corporation."

Where a statute prescribes what matters, proceedings and business of a corporation may be regulated by its by-laws, the members are thereby precluded from enacting by-laws on any other subject, and, for a stronger reason, they can enact no legal by-laws in contravention of any statutory provision or of any provision of the charter or articles of incorporation.

10 Cyc., 355.

I. Thompson on Corporations, Sec. 1010 *et seq.*

Ireland *vs.* Globe Milling, Etc., Co. (R. I.), 32 Atl., 921.

Brewster *vs.* Hartley, 37 Cal., 15.

Kolff *vs.* St. Paul Fuel Exchange (Minn.), 50 N. W., 1036.

Bergman *vs.* St. Paul Mut. Bldg. Ass'n No. 1 (Minn.), 13 N. W., 120.

Presbyterian Assur. Fund *vs.* Allen (Ind.), 7 N. E., 317.

Brinkerhoff-Farris Trust, Etc., Co. *vs.* Home Lumber Co. (Mo.), 24 S. W., 129.

Carr *vs.* City of St. Louis, 9 Mo., 191.

Mutual Fire Ins. Co. *vs.* Farquhar (Md.), 39 Atl., 257.

Darrin *vs.* Hoff (Md.), 48 Atl., 196.

Pempel *vs.* Dodge (Tex.), 32 S. W., 514.

Hence, it necessarily follows that the attempt, by a so-called amendment of the by-laws of said Shawnee Compress Co. to reduce the number of directors thereof to three, at the special or called meeting of stockholders of April 24, 1905, even if said meeting had been legally called for the purpose of amending its by-laws, must be

declared an absolute nullity, for the reason that the number of the directors of a corporation shall be stated in its articles of incorporation, and the certified copy of the articles of incorporation of said Shawnee Compress Co. provides that the number of its directors shall be five (R., p. 184).

It is also evident that, at least five of the nine directors elected by the stockholders of said company at their last previous annual meeting were legally elected and (being stockholders) were in all respects qualified to fill the offices to which they had been elected, and, as none of them ever tendered his resignation, it is somewhat interesting, as well as novel to note the facility with which, at least, two of those so legally elected, qualified and acting were ousted from office or dispensed with by the passage of this resolution pretending to reduce the number to three, and this evidently for the purpose of enabling Messrs. Beatty and Stubbs to constitute a majority (therefore a quorum) of the board, and without any attempt whatever to comply, in any respect, with a single requirement of that section of the statute hereinbefore quoted providing for the removal of directors.

By one of the provisions of another section of our statute hereinbefore quoted, it is evident that the duration of the term of office of directors of corporations is one year and until their successors are elected and qualified; consequently the term of office of all those legally elected as directors of said company at the last preceding annual meeting of stockholders did not expire until the next annual meeting, which could not have been held

until the first Tuesday of June following the date of said special meeting.

See, also, Nathan *vs.* Thompkins (Ala.), 2 So., 747.

It is also apparent that the stockholders of the Shawnee Compress Co. had as much, if not more, authority to elect a board of directors consisting of nine members as they had to elect one consisting of only three. Consequently they had no power, at a special meeting of stockholders without any purpose whatever having been specified in the notice calling such meeting, to oust a portion of the members of said board otherwise than by the statutory proceedings provided for such removal, and this must have been strictly followed.

It is well settled that where a governing statute or the charter of a corporation prescribes the manner in which the power of removal of the members of its board of directors (or other officers) may be exercised, such method must be strictly followed, if (in fact) a judicial inquiry is not essential for such purpose, and said officers cannot be disfranchised in any other way.

10 Cyc.

State *vs.* Trustees of Vincennes University, 5 Ind., 77.

Southern Plank Road Co. *vs.* Hixon, *Ibid*, 165.

Copeland *vs.* Minong Mining Co., 33 Mich., 2.

See also, Detweiler *vs.* Commonwealth (Pa.), 18 Atl., 990.

State *vs.* Chamber of Co. of the City of Milwaukee, 20 Wis., 68.

Certainly, then, it must be conceded that the resolution passed at the special meeting of stockholders of

April 24, 1905, assuming to reduce the number of directors of said company to three, and thereby to oust all others elected at the said preceding annual meeting of stockholders, is absolutely void, hence there were other legally elected directors of said company than Messrs. Beatty, Stubbs, and F. E. Anderson, whose terms of office did not expire until the following annual meeting of stockholders, and the undisputed evidence of Mr. Beatty himself shows that the only parties notified of the special or called meetings of directors of April 26 and May 1, 1905, at which it was attempted (in a way) to ratify the action of the special stockholders' meeting of April 24, 1905, and the action of the committee appointed thereat, in authorizing the execution of said lease contract, were Messrs. Stubbs and F. E. Anderson, besides himself. And there is, perhaps, no more firmly established rule of law than that notice of a special or called meeting must be given to all members of the board of directors of a corporation, so that each will have an opportunity to attend, in order to render any of the proceedings had thereat valid, for the reason that "Every director is entitled to the reasoning, judgment and advice of every other director, and can not be deprived therefrom through failure to give notice. So the stockholders are entitled to have the corporate business conducted in view of the experience and wisdom of all the directors, and of this right they can not be deprived by the arbitrary will of a quorum."

Singer *vs.* Salt Lake City Copper Mfg. Co. (Utah), 53 Pac., 1024.

See also, Doernbecher *vs.* Columbia City Lumber Co. (Or.), 28 Pac., 899.

Hill *vs.* Rich Hill Coal and Min. Co. (Mo.), 24 S. W., 223.

Commonwealth *vs.* Cullen, 13 Pa. St., 133.

Pauly *vs.* Pauly (Cal.), 40 Pac., 29.

First Nat. Ba. *vs.* Asheville Furniture and Lum. Co. (N. C.), 21 So., 948.

Vaught *vs.* Ohio Co. Fair Co. (Ky.), 40 S. W., 426.

Harding *vs.* Vandewater, 40 Cal., 78.

3 Clark & Marshall on Corporations, Sec. 680, p. 2082.

Curtin *vs.* Salmon River Hydraulic Gold Min. and D. Co., *supra*, 62 Pac., 552.

People *vs.* Batchelor, 22 N. Y., 129.

In Vaught *vs.* Ohio County Fair Co., *supra*, it is held that "Proceedings at a special meeting held by a bare majority of the board of directors, without notice to the other members, are void, although all of those present voted in favor of the action taken, and the result would have been the same had the other members been present."

As before seen by the undisputed evidence in the case at bar, the special meeting of the board of directors of said Shawnee Compress Co., held on April 26, 1905, was only attended by two of the five directors required by the articles of incorporation, to-wit: Messrs. Beatty and Stubbs, and that held on May 1, 1905, while attended by three members thereof, to-wit: Messrs. Beatty, Stubbs and F. E. Anderson, the latter not only refused to participate in the proceedings attempted to be taken thereat,

but filed a written protest (R., 22) denying the authority of the parties assuming to represent said corporation as its board of directors to take any legal action upon any matter coming before said meeting.

We also think it important to note, in this connection, that the reason assigned in the resolution offered by Mr. Beatty for attempting to reduce the number of the directors of said company from nine to three, was because the articles of incorporation and charter of said company "fixes the number of the board of directors of said corporation at three" (R., 15–202); and he based his claim, in this regard, upon the statement contained in the alleged telegram from William Grimes, as Secretary of Oklahoma, to one C. J. Benson (R., 183); but it is evident that the statement contained in said alleged telegram, to the effect that the board of directors of said company should consist of only three members, is false, as the duly certified articles of incorporation requires that said board shall consist of five members; but as to whether or not Mr. Beatty, and some of his associates who were most active in urging the execution of said lease contract, knew this statement to be false at the time, the evidence does not disclose. However, putting this matter in the most favorable light for the contention of appellants, it must be admitted that the action of the stockholders in passing said resolution was caused by a mutual mistake of fact, as to the actual number of directors required by said articles of incorporation, and this mistake will suffice to render the action so taken by said

stockholders (at least) voidable at the election of any one or more of them upon the discovery of the mistake.

9 Cyc., 397.
16 Cyc., 733.

Again, as before seen, neither the notice calling the special meeting of stockholders nor either of those calling the special meetings of said pretended board of directors of April 26 and May 1, 1905, stated any purpose whatever for which any of said meetings had been called.

At a special meeting either of the stockholders or the directors of a corporation, called by a notice of this character, only the ordinary business of such corporation can be legally transacted.

Mutual Fire Ins. Co. *vs.* Farquhar, *supra*, 39 Atl., 527.
10 Cyc., 785.
Peoples' Mutual Ins. Co. *vs.* Westcott, 80 Mass., 440.
Mercantile Library Hall Co. *vs.* Pittsburg Library Ass'n, 33 Atl., 714.
In the Matter of Long Island R. R. Co., 19 Wend. (N. Y.), 37.

As is well said in the opinion of the case, In the Matter of The Long Island Railroad Co., *supra*, "The statute providing for long notice to the stockholders should be liberally expounded; it enables them to qualify for the election; tends to promote a full assemblage, and thereby guards against contrivance, and the ill effects that may result from partial representation."

As shown by all the testimony bearing upon the subject, and as directly stated by Mr. B. L. Anderson, one of

the plaintiffs, the lease proposition made by Mr. Hanson and submitted at said stockholders' meeting by Mr. Beatty, "was absolutely cut and dried" (R., 166); and, as none of the appellees had any knowledge of the fact that such a proposition be sprung, their representatives at such meeting were naturally taken by surprise, and thereby placed at a very great disadvantage in combatting same, and this is the most potent reason for requiring that the notice calling a meeting of stockholders of a corporation for such an extraordinary purpose should not only be given in due time, but should state the purpose for which such meeting is called.

Of course the special meeting of stockholders called for and held on April 24, 1905, had all of the stockholders of said Shawnee Compress Co. been present, could have legally acted upon said lease proposition by said stockholders complying with the requirements of said section 964 (W. S., 976), hereinbefore quoted, by each signing a written consent to the holding of such meeting on the records thereof, but as there was no pretense at compliance with the provisions of said section, it surely must follow that all of the proceedings taken at said meeting relative to the authorization of the execution of said lease contract must be declared void.

Furthermore, the meeting of stockholders of April 24, 1905, was not called in compliance with the requirements of Sec. 4, of Article 3, of the by-laws of said company, which provides that, "Special meetings of the stockholders shall be called by the secretary by mailing a notice, at least ten days prior to the date of such meet-

ing, to each stockholder, at the request in writing, or by vote of the majority of the board of directors, or at the request in writing by stockholders of record owning a majority in amount of the outstanding capital stock of the corporation" (R. 202).

In fact, no effort whatever seems to have been made by Mr. Beatty and those other stockholders of the Shawnee Compress Co. assisting him in the efforts to bring about the negotiation and execution of said lease contract to comply with any of the provisions of the existing by-laws of said company, or with any statutory provision applicable to the proceedings being taken, but, on the contrary they, with apparent "malice aforethought," acted in direct contravention of nearly all of such provisions.

Counsel for appellants in their brief, page 54, say:

> "It is important at the very outset of a discussion of these matters to bear in mind that the plaintiffs, appellees herein, Andersons, were present at all the meetings in which any action was taken upon the matter of executing the lease in controversy. The appellees by attending and participating in a meeting waived the failure of notice to apprise them of the purpose of the meeting."

Counsel are in error in two particulars.

1. They have misstated the facts.

2. They have failed to state the law applicable to this case.

The law governing the legality of the stockholders' meeting of April 24, 1905, is statutory. The Oklahoma

Statutes, Sec. 964 (W. S., 976), provides that, "When all the stockholders * * * of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed." Some of the stockholders were not present at that meeting and a written consent thereto on the record of the meeting was not signed by those present. The law having provided specifically how such irregularities may be waived, no attempted waiver in any other manner will be effectual, and any pretended waiver thereafter by non-attending stockholders is of no consequence.

The record shows that neither B. L. Anderson nor any other member of the firm of Neil P. Anderson & Co. attended either of the meetings of the newly selected so-called board of directors following the said stockholders' meetings, at which meetings of said board Beatty and Stubbs attempted to authorize the execution of said lease or ratify the action of the committee appointed by said stockholders' meeting in negotiating the same. Both Andersons voted against said action looking to a lease, and therefore were not committed to it in any way. Furthermore, B. L. Anderson held the proxy for his firm, Neil P. Anderson & Co., and F. E. Anderson held proxy for Anderson, Clayton & Co. This court, in the case of Scovill vs. Thayer, 105 U. S., 143, held that there cannot be estoppel by proxy when the act was illegal.

It therefore follows that if the Andersons had voted

for the illegal act instead of against it the appellees here would not have been estopped and bound by their action. The firms were the stockholders and not the Andersons individually. "A stockholder in a corporation is not estopped from questioning the validity of a stockholders' meeting by reason of his participation in the proceedings by proxy, as his agent was only authorized to act at lawful meetings." Mathews *vs.* Columbia Nat. Bank., 79 Fed., 558. The meeting of April 24, 1905, was not lawful for the transaction of the business attempted to be transacted. F. E. Anderson appears to have been in the room, but to have taken no part in the meeting immediately following the said stockholders' meeting. Neither was he nor any member of his firm present at the meeting of April 26. While present at the meeting May 1, 1905, he filed at the outset his written protest and took no part in the meeting otherwise.

Peoples Mutual Ins. Co. *vs.* Westcott, 80 Mass., 440.

June 17, 1904, at the annual meeting, nine directors were elected for one year. By the undisputed evidence C. J. Benson and B. L. Anderson were so elected. At least five were legally elected; none resigned and none had been removed. No stockholders had complained of the number. In fact, the next stockholders' meeting was the meeting of April 24. Then what was the status of the nine directors?

Thompson on Corporations, 3 Sec., 3924, says: "The action of the directory of a corporate body composed of a greater number than allowed by the charter is none

the less valid and binding if the stockholders do not complain, but acquiesce."

It therefore follows that they remained directors until the annual meeting in June, 1905. Oklahoma Stat., 1893, Sec. 953, provides that: "Directors of a corporation must be elected annually by the stockholders or members, and if no provision is made by the by-laws for the time of election, the election must be held on the first Tuesday in June." Section 954, provides that: "At the first meeting at which by-laws are adopted, or at such subsequent meeting as may then be designated, directors must be elected to hold their offices for one year, and until their successors are elected and qualified."

Article 3, Section 1, of the by-laws adopted in stockholders meeting June 17, 1904, is as follows: "The annual meeting of the stockholders of this corporation shall be held on the first Tuesday in June each year, at the office of the corporation in Shawnee, Okla., when they shall elect by a plurality vote by ballot, the board of nine directors to serve for the ensuing year" (R., 201).

Singularly enough, when an attempt was made to amend this by-law April 24, 1905, the following is the result:

"Section 1. The annual meeting of the stockholders of this company shall be held on the first Tuesday of June in each year, at the office of the corporation in Shawnee, Oklahoma Territory, when they shall elect by plurality vote, by ballot, a board of three directors to serve for the ensuing year. And that said original section 1 of article 3 be and the same is hereby repealed" (R., 203).

Either the original section or the amended section was in force at the time of the said stockholders' meeting April 24, 1905, and was the law of the corporation at that time, and by which it was bound.

The conclusion is obvious that said pretended election April 24, 1905, violated both the law of the Territory and the by-laws of the corporation. Whatever might have been the power of the stockholders to change the time of election of directors they did not make the change. It follows that the election was illegal.

In Nathan vs. Thompson (Ala.), 2 So., 747, the rule upon the question of the legality of an attempted election of directors prior to the expiration of their terms of office is stated as follows: "In Alabama the election and term of office of the directors and officers of street railway companies are governed by code; secs. 1923, 1925, which contemplate only annual elections; and a majority of the directors of such a corporation cannot, by changing the time of the annual meeting of the stockholders, change such term, and authorize an election by the stockholders of a new board before the term as limited by the statute has expired."

Section 960 of our statute provides the only method for the removal of directors, and further provides that: "In case of removal, the vacancy may be filled by an election at the same meeting." But, as clearly shown by the record in the case at bar, and, as we think, fully understood by counsel for appellants, the holders of a majority of the stock of the Shawnee Compress Co. assumed not only to reduce the number of directors

required by the articles of incorporation of said company, but to elect an entirely new board of directors therefor at a special stockholders' meeting held long prior to the expiration of the term of office of the board elected at the previous annual meeting, by the passage of a mere resolution purporting to amend the by-laws of said company, and this without any notice having been given to the stockholders of the purpose for which said meeting had been called. Surely it needs no further argument to show that this entire proceeding is utterly void under the provisions of the statute of this Territory referred to hereinbefore.

V.

The trial court erred in admitting, on behalf of appellants, certain incompetent testimony over the objection of appellees, to which said rulings appellees at the time duly excepted.

Under this head we shall only very briefly call attention to a few of the rulings of the trial court in the admission of testimony wherein we believe prejudicial error was committed.

On page 87 of the record is found the following question, objection, ruling and answer in the testimony of Mr. Beatty during his examination in chief for appellants:

> "Q. What has been the financial condition of the Shawnee Compress Company during the last year?
>
> "Mr. Keaton: Objected to as incompetent, irrelevant and immaterial. Overruled. Exception.

"A. The company since—even before my firm became a stockholder—has been in a bad condition financially, as shown by the books of the company that were turned over to me, and I investigated before my firm bought the stock."

In the first place, the foregoing question calls for and the answer states a mere conclusion of the witness, and this is based largely upon an examination of the books of the Shawnee Compress Co., which were never introduced in evidence, and, in the second place, the testimony is incompetent, in any event, to any material issue involved in the case.

As shown in page 92 of the record the court permitted the same witness, over the objection of counsel for plaintiff, to give a conversation between himself and Mr. Benson (being two members of the committee appointed at the special meeting of stockholders of April 24, 1905), representing the Shawnee Co., and Mr. Hanson, representing the Gulf Compress Co., as to terms which were to be included in the lease contract, which said ruling, we think, was erroneous.

As shown on page 94 of the record, the court permitted said witness, over the objection of counsel for plaintiffs on the grounds that said testimony was incompetent, irrelevant, immaterial, leading and suggestive, to state his conclusion, to the effect that it was absolutely necessary to lease the property, good will, etc., of said Shawnee Compress Co. in order to pay the indebtedness thereof, in which, we think, prejudicial error was also committed.

Again the court permitted a certain purported tele-

gram from William Grimes, as Secretary of Oklahoma Territory, to one C. J. Benson, which was produced at said special meetings of stockholders and at the trial of this cause by Mr. Beatty, stating that the number of the board of directors of said Shawnee Compress Co. is three, to be introduced in evidence, without any further identification thereof or foundation being laid therefor, and over the objection of counsel for plaintiffs on the grounds that it was incompetent, irrelevant and immaterial and not the original telegram and not the real signature of the party (R., 117, 121 and183).

In admitting this testimony we think the trial court undoubtedly committed prejudicial error, as a telegram was certainly not the proper character of evidence to prove the fact stated therein; and, furthermore, had it been competent, no proper foundation was laid for its introduction. The only purpose for which it could have been introduced was to dispute the statement contained in the duly and properly certified copy of the articles of incorporation of the Shawnee Compress Co., which had previously been introduced in evidence, showing that the number of members composing the board of directors of said company must be five, and it seems that the court must have relied on the statement contained in the telegram in preference to that contained in said copy of the articles of incorporation. Otherwise it seems that he could not possibly have held any of the proceedings had at the pretended special meetings of the board of directors of said company, held on April 26 and May 1, 1905, to be legal and valid, and therefore binding upon these appellees and said company.

VI.

In the second division of the argument of counsel for appellants an effort is made to avoid the consequences of their own illegal acts by an unwarranted and unjustifiable attack on the Andersons. The record discloses no act upon the part of the appellees which could call for the application of the principle attempted to be invoked by counsel.

The rule that a suitor must come into equity with clean hands has been thus stated:

> "Equity will not at the suit of one of the fraudulent parties, while the agreement is executor, compel its execution, or decree its cancellation, nor after it is executed set it aside and restore such party to the property or other interests which he has fraudulently transferred."

Wheeler *vs.* Sage, 1 Wall., 518.

Where complainants do not come into court with clean hands, and are seeking the benefit of a contract obtained by their fraud, deceit or unfair means, they can have no standing in a court of equity.

Kitchen *vs.* Rayburn, 19 Wall., 254.

If the Andersons, therefore, procured the execution of this illegal contract by fraud and are seeking the benefit of said contract they are in court with unclean hands.

There are just two insurmountable difficulties in bringing the Andersons within the rule.

1. They did not procure the execution of the contract by fraud or otherwise.

2. They are not seeking any benefit under the said contract.

On the other hand, the appellees did all they could within reason to prevent the execution of the said contract, and are not seeking any benefit under it, but are seeking to have it annulled.

Counsel for appellants state that the plant had been operated the preceding year by Beatty and Stubbs, "owners of a majority of the stock" (not owners of a majority prior to April 11, 1905), at a loss of $2,042.53. That statement is in direct conflict with Appellant Beatty's testimony that the net earnings for that year was $7,386.05 above the insurance and whatever taxes were paid. (R., 104 and 105.) The company expended for improvements $4,956.50, and permanent equipment $413. (R., 104.) At page 88 of record, counsel for appellants asked said Beatty this question:

> "Q. At the time (early in April, 1905) that you went to Memphis to see Mr. Hanson, what was the condition of the compress at that time?
>
> "A. The company had had one season's business and as best we could estimate it, was about $7,000 better off than we were before."

Nor are the succeeding statements made by counsel in accord with the facts. Beatty did testify that B. L. Anderson told him that he was interested in twenty compresses. Mr. Anderson testified that was untrue—that he was interested in fourteen in all, nine in Texas and five in the two Territories.

F. E. Anderson's firm was interested in but one, the

one at Shawnee. They are merely minority stockholders in this compress, and it is believed are not majority stockholders in any compress. They became interested in this plant at the instance of Beatty, who went to Fort Worth to influence Neil P. Anderson & Co. to buy stock in it. After purchasing the stock they sent all the cotton to the plant they could send there, paid all assessments levied on their stock, and stood ready to obtain financial assistance to the extent of procuring sufficient money to take up the indebtedness due by the Shawnee Compress Company. They did not attempt to purchase nor offer to purchase the plant until the request was made by Mr. Douglas, who sent a letter to F. E. Anderson, and at the conference which followed Douglas asked the Andersons to buy (R., 152, 197). Douglas was treasurer of the Shawnee Compress Co. (R., 153).

An offer was made to buy the plant outright or to purchase stock up to 400 shares. The offer they made was deemed by them to be a fair one, and that position is strengthened by the sale of stock theretofore, the statutory obligations a stockholder assumes and the indebtedness due by the company. There was nothing in these or any other acts of the appellees which violated any provision or policy of either statutory or common law.

F. E. Anderson is not a member of the firm of Neil P. Anderson & Co., and B. L. Anderson is not a member of the firm of Anderson, Clayton & Co., and did not represent it in any compress companies. Anderson, Clayton & Co. were interested as stockholders in one compress only. So the statement of counsel for appellants, on page 35 of their brief, is untrue.

The most striking feature of the appellants' brief on this branch of the case is the continued gross misrepresentations of fact. The Andersons did not press their offer to buy, nor did they threaten the company with competition.

There is absolutely no testimony tending to show that any of appellees threatened to build a competing press at Shawnee so long as the business of the Shawnee Compress Company was conducted by its own managing officers. The statement of B. L. Anderson to Mr. Hanson, both in his telegram and verbally, being that "If you lease Traders' Company will build immediately Shawnee and Oklahoma City." The only testimony referring to the matter of building in the event that the lease contract to the Gulf Compress Company was not consummated is that of Mr. Beatty, in which he states: "My conversation with Mr. B. L. Anderson, in which Mr. F. E. Anderson was present, was to the effect that I asked Mr. Anderson if he would agree not to erect a press in Shawnee for the next five years if we wouldn't agree to lease; he says 'no.' I says, 'will you agree not to erect a press within the next twelve months if we agree not to lease,' and he says 'we will not,' and I said, 'well, I am certainly going to lease this press.'" (R., 137.)

The record discloses that B. L. Anderson had no authority to make any such agreement as was suggested by Beatty.

Appellants, on page 39 of their brief, take occasion to criticise the conduct of the Andersons at the stockholders' meeting, April 23, 1905 (doubtless meaning April

24, 1905). It is said none of the stockholders present, except the Andersons, knew the "number of directors required under the charter."

It is said the Andersons knew how many were required but there is not a syllable of testimony that they did know.

They were non-residents and had been stockholders since June, 1904.

The articles of incorporation of the Shawnee Compress Company and amendments thereto show that on or about the 17th day of July, 1899, C. M. Cade, W. S. Search, J. M. Aydelotte and A. J. Dossett made application for the incorporation of said company, with a capital stock of $11,000.00, and that thereafter, and on or about the 13th day of November, 1899, an application was made, by the same parties, to increase the capital stock of said company to $16,000.00; that thereafter, and on the 10th day of June, 1901, J. M. Aydelotte, A. M. Graves, A. E. Nelson, C. J. Benson, H. T. Douglas, D. M. Cheatham and John M. Butcher, as stockholders thereof executed a written authorization to the directors of said company to still further increase its capital stock from $16,000.00 to $50,000.00, and on July 1, 1901, C. J. Benson, as secretary of said company, made application to the Secretary of the Territory for such increase (R., 145).

The certified copy of the articles of incorporation introduced in evidence by plaintiffs in the case at bar was made by the Secretary of the Territory on April 26, 1905 (R., 184).

It is apparent that if, as must be considered altogether likely, this certified copy was mailed to plaintiffs or their attorneys they could not have received same until late in the afternoon of the 26th or the morning of the 27th of said month, hence, there being absolutely no other testimony relating to the matter, it is pertinent to ask by what authority do counsel for defendants assume that plaintiffs had knowledge of the fact that five directors were required by the articles of incorporation at the special meeting of stockholders held on April 24, 1905? In this connection it is certainly also pertinent to suggest that the original certificate or patent, issued by the secretary when said corporation was organized, should show the number of directors specified in the articles of incorporation, and should, as well as a copy of said articles, be in the possession of the secretary thereof, especially as no showing was made at the trial that either of them was lost or mislaid. Furthermore, there is absolutely no foundation in fact for the statement of counsel contained in their brief to the effect that the secretary of the Shawnee Compress Company wired Secretary Grimes, as there is nothing whatever to show that anybody wired Mr. Grimes, but the pretended telegram introduced in evidence was one purporting to have been sent by Mr. Grimes to C. J. Benson, who was not the secretary of the Compress Company at the time, but appears to have been secretary thereof at the time the capital stock was increased from $16,000.00 to $50,000.00. However, the telegram was produced both at the stockholders' meeting of April 24, 1905, and at

the trial of this cause by Mr. Beatty, who claimed to be and was acting as secretary of said company on both dates, and without any further identification than Mr. Beatty's mere statement that it was from Mr. Grimes.

Viewing the testimony in the most favorable light for the appellants, the most that can be said is that the parties composing the firm of Neil P. Anderson & Company, who were also stockholders in the Traders Compress Company, were willing, perhaps desirous, of purchasing either the physical property of the Shawnee Compress Co. or a majority of its stock, but this fact surely cannot legitimately be construed into a conspiracy to depress the value of the stock and to strangle the business of said company so as to coerce such a sale. In fact, the testimony of the star witness on behalf of the defendants, to-wit, Mr. Beatty, who was acting as secretary of said company, shows that, during the season of 1904–5, plaintiffs shipped to said plant for compression between ten and twelve thousand bales of cotton, of which the firm of Neil P. Anderson & Co. handled about six thousand bales, and F. E. Anderson testifies that he not only did nothing to depress the price of the stock of said company or to embarrass its business operations but that he "had done what I could all the year to feed the compress and to put all the cotton into the Shawnee Compress that could go there through the whole season"; and B. L. Anderson testifies practically to the same thing.

That it was not necessary, under the facts disclosed by the pleadings and evidence in the case at bar, for appel-

lees to have made a formal demand on the parties assuming to act as the majority members of the board of directors to prosecute this action or to take any other steps to rescind the illegal actions taken in the matter of authorizing and executing the lease contract complained of, is not only held by many of the cases cited heretofore, but is clearly established by the following cases:

Montgomery Traction Co. *vs.* Harmon (Ala.), 37 So., 371.

Northern Trust Co. *vs.* Snyder (Wis.), 89 N. W., 460.

McConnell *vs.* Combination M. & M. Co. (Mont.), 76 Pac., 194.

Shoening *vs.* Schwenk (Io.), 84 N. W., 916.

Appleton *vs.* American Malting Co. (N. J.), 54 Atl., 454.

Rogers *vs.* Nashville, C. & St. Ry. Co., Fed. 299.

People's Mutual Ins. Co. *vs.* Westcott, 80 Mass. (14 Gray), 440.

See also on this question of estoppel:

German Safety Vault & Trust Co. *vs.* Boynton, 71 Fed., 797.

Durkee *vs.* People (Ill.), 40 N. E., 627.

Byrne *vs.* Schuyler Elec. Mfg. Co. (Conn.), 31 Atl., 833.

Kolff *vs.* St. Paul Fuel Ex. (Minn.), 50 N. W., 1036.

Hill *vs.* Rich Hill Min. Co. (Mo.), 24 S. W., 223.

In Koliff *vs.* St. Paul Fuel Ex., *supra*, it is held that—

"Mere failure of a stockholder to object to void by-laws until attempt is made to enforce them

against him does not estop him to object to them;" and in Hill *vs.* Rich Hill Min. Co., *supra*, it is held that "The mere presence of a director owning a majority of stock at a meeting held without notice does not make such meeting, nor contracts entered into thereat, valid."

In fact, it seems clear that neither of the co-partnership firms constituted by appellees are estopped from alleging the invalidity of the proceedings had, especially of the alleged newly elected board of directors, authorizing the execution of said lease; and as heretofore shown and not disputed by counsel for appellants, it was absolutely necessary, to the validity of said lease, that same be authorized by a legally constituted board of directors at a legally called meeting for that purpose, and that the stockholders, if all had been notified of the purpose of a meeting called to authorize such a lease, could not, by a unanimous vote, have done so independently of any action taken thereon by the board of directors of said company.

Gashwiler *vs.* Willis, 33 Cal., 12.

The appellees are in court with clean hands asserting rights given to them by the law in the way the law prescribes.

From the foregoing considerations the judgment of the Supreme Court of the Territory of Oklahoma should be affirmed:

I. Because the pretended lease contract is illegal under the law applicable thereto, for the reason that it is in restraint of trade and competition.

II. Because said pretended lease contract is *ultra vires* and therefore void.

III. Because said pretended lease contract was executed by parties assuming to represent the Shawnee Compress Company, not for the best interests of the corporation, but to advance their own private interests, and is therefore void at the suit of appellees, non-assenting stockholders.

IV. Because the proceedings leading up to the execu tion of said pretended lease contract were illegal and therefore void.

V. Because the appellees were entitled to a reversal of the trial court by reason of the erroneous admission of testimony over the objection of appellees to which exceptions were duly taken and noted.

VI. Because appellees are entitled to the relief prayed for in their petition and amended petition.

Respectfully submitted.

JOHN W. SHARTEL,
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NOEL W. BARKSDALE,
Counsel for Appellees.

WASHINGTON, D. C.,
January 18, 1908.

SHAWNEE COMPRESS COMPANY v. ANDERSON.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

No. 140. Argued March 2, 3, 1908.—Decided April 13, 1908.

Where the Supreme Court of the Territory of Oklahoma reverses the judgment of the trial court, the reviewing power of this court is limited to determining whether there was evidence supporting the findings and whether the facts found were adequate to sustain the legal conclusions.

In this case, the Supreme Court of the Territory having found that a lease, being made to further an unlawful enterprise, was void as an unreasonable restraint of trade and as against public policy, this court sustains the judgment, there being proof supporting the conclusions to the effect that the lessor company agreed to go out of the field of competition, not to enter that field again, and to render every assistance to prevent others from entering it—other acts in aid of a scheme of monopoly also being proved.

It is not necessary to determine whether the Supreme Court of the Territory based its judgment holding such a lease void, on the common law, on the Sherman law, or on the statutes of the Territory; the restraint placed upon the lessor was greater than the protection of the lessee required.

17 Oklahoma, 231, affirmed.

THIS suit was brought in the District Court of the county of Lincoln, Territory of Oklahoma, by appellees as stockholders of the Shawnee Compress Company against appellants, to cancel a lease made by the Shawnee Compress Company to the Gulf Compress Company.

The original petition alleged that the compress companies were respectively corporations of Oklahoma and the State of Alabama; that the plaintiffs, appellees here, were minority stockholders of the Shawnee Company; that certain of the stockholders of the Shawnee Company, claiming to be its officers, "conceived the idea of leasing the entire property and business of said company, together with its good will and the right to the business thereof to said defendant, Gulf Compress Company, a foreign corporation;" that subsequently the

same stockholders, claiming to be the directors of the corporation in certain meetings and by certain resolutions, executed the purpose. These meetings were alleged to be invalid as not being in conformity with the by-laws, and that the proceedings therein were "wholly illegal and beyond the powers and authority of the said stockholders and directors of said corporation;" that the corporation was organized to construct and operate a cotton compress in the city of Shawnee, and that its officers and stockholders were not authorized to execute a lease for a period of years, vesting in another and foreign corporation, the rights, duties and business of the company, and that the lease was void as against the rights of plaintiffs, being minority stockholders of the company. A copy of the lease was attached to the petition.

The petition was amended, making the allegations somewhat fuller, and alleged that appellants Stubbs and Beatty, who assumed to act respectively as president and secretary of the company, and certain other stockholders who joined with them in the negotiation of the lease, were induced thereto by certain advantages personal to themselves and not by the interest of the company. It was also alleged that the "exigencies of the business" of the company did not demand or justify the lease, and that its revenues for the season 1904–1905, over and above taxes and insurance, notwithstanding negligent and incompetent management, were $7,485.89; and, plaintiffs expressed the belief, could be made greater for the years covered by the lease. It was alleged that the Gulf Compress Company was in the business of leasing and operating competing compresses for the purpose of monopolizing, as far as possible, the business of compressing cotton in a large portion, if not all, of the cotton-raising districts of the United States, and that the lease was procured from the Shawnee Company in pursuance of said scheme, and other leases of other compresses were also secured for like purposes, and that the Gulf Company is in its operation and method of conducting business a trust, combine and conspiracy, in restraint of trade

and commerce, in violation of the Federal anti-trust law and the anti-trust law of the Territory of Oklahoma, and that it is the design of the Gulf Compress Company to increase the charge of compressing cotton, and that it will be able to enforce such charges by reason of the fact that it will control all of the compresses in the Territory.

There was a demurrer to the petition, which was overruled. An answer was then filed, which in detail asserted the validity of the proceedings preceding the execution of the lease; that the company was indebted in the sum of $17,250—$6,000 to the Shawnee National Bank and $11,250 to the Webb Press Company, Limited, which was past due; that its creditors were pressing for payment, and that the lease was necessary in order to procure money by which to pay the Shawnee Bank and to secure the extension of time on the indebtedness due the Webb Press Company, and that for these reasons the negotiations for the lease were entered into and the lease finally made. And it is alleged that the consideration paid was fair and reasonable and for the best interest of the stockholders of the Shawnee Company; that defendants could procure said second mortgage money in no other way, and that the property of the Shawnee Company would have been sold at a great sacrifice unless the lease had been made.

It is alleged that appellees are firms of cotton buyers, and in order to obtain an unfair advantage over other buyers have conspired together for the purpose of forming a monopoly of all the compresses in the Territory and destroying competition in compressing, and, in order to carry out the conspiracy, have, for more than six months, endeavored to obtain a majority of the stock of the Shawnee Company, and, knowing that Beatty and Stubbs were involved and in need of money, have in all ways oppressed said Beatty and Stubbs to compel them to sell their stock to appellants for an inadequate consideration and conspired to compel the Shawnee Company, knowing it was involved and its demands pressing, to sell and convey its property to them for the inadequate consideration of $25,000.

And it is alleged that the lease was made to defeat such conspiracy. Other plans of the appellees to harass the Shawnee Company are averred.

The case went to trial on the issues thus formed and resulted in a judgment for defendants (appellants here). The judgment recited that "the court having heard all the evidence offered . . . and being fully advised in the premises finds for the defendants and against the plaintiffs that the allegations of the petition of the plaintiffs are not supported by the law and the evidence."

A motion for a new trial was denied and the case was then taken to the Supreme Court of the Territory, which court reversed the judgment of the court below, and the case was remanded to the District Court, with instructions to that court to render judgment for plaintiffs in the case (appellees here) in accordance with the opinion of the Supreme Court, and the prayer of the amended petition.

Mr. B. B. Blakeney, with whom *Mr. G. T. Fitzhugh* was on the brief, for appellants:

An act is not necessarily invalid because in restraint of trade, when the restriction of trade is an ancillary or incidental result.

To be condemned by the law a contract must be an agreement between the parties to restrict trade, and such contract is invalid, whatever may be the result of its operation. If a purchaser buys one or more compresses and operates them as his own property, competition is to that extent restricted, but being incidental, such contract is not invalid, and will not be held invalid because the purchaser may have taken a contract from the seller obligating the seller not to carry on or resume such business. Such provisions are usual and have been sanctioned by the courts. *Fowle et al.* v. *Park et al.*, 131 U. S. 88; *Gibbs* v. *Gas Co.*, 130 U. S. 396; *Cin., P. B. S. & P. P. Co.* v. *Bay et al.*, 200 U. S. 179; *United States* v. *Joint Traffic Association*, 171 U. S. 505; *Bement & Sons* v. *National Harrow Co.*,

186 U. S. 70, 92; *Navigation Company* v. *Windsor*, 20 Wall. 64, 68; *Diamond Match Co.* v. *Roeber*, 106 N. Y. 473; *Tode* v. *Gross*, 127 N. Y. 480; *Beal* v. *Chase*, 31 Michigan, 490; *Hubbard* v. *Miller*, 27 Michigan, 15; *National Ben. Co.* v. *Union Hospital Co.*, 45 Minnesota, 272; *Whitney* v. *Slayton*, 40 Maine, 224; *Pierce* v. *Fuller*, 8 Massachusetts, 222; *Richards* v. *Seating Co.*, 87 Wisconsin, 503; *National Enameling & Co.* v. *Haveman*, 120 Fed. Rep. 415; *United States* v. *Addyston P. & S. Co.*, 29 C. C. A. 141; *S. C.*, 85 Fed. Rep. 271; *Davis* v. *Booth*, 131 Fed. Rep. 31, 37; *S. C.*, 127 Fed. Rep. 871; *In re Greene*, 52 Fed. Rep. 104; *Chicago, St. L. &c. Ry. Co.* v. *Pullman*, 139 U. S. 79; *Jarvis et al.* v. *Knapp*, 121 Fed. Rep. 39; *Booth et al.* v. *Davis*, 127 Fed. Rep. 871, and cases cited; *Carter* v. *Alling*, 43 Fed. Rep. 208; *Harrison* v. *Refining Co.*, 116 Fed. Rep. 304; *State* v. *Shippers Compress &c. Co.*, 95 Texas, 603; *S. C.*, 69 S. W. Rep. 58.

The statutes of Oklahoma expressly authorize a contract of this character. Wilson's Revised and Annotated Statutes of Oklahoma, §§ 819, 820.

Both of these statutes were adopted from the statutes of California and have been frequently construed by the Supreme Court of that State. *Brown* v *Kling*, 101 California, 295; *Gregory* v. *Speiker*, 110 California, 150; *Ragsdale* v. *Nagle*, 106 California, 332; *City Carpet Beating &c. Works* v. *Jones*, 102 California, 506; *Vulcan Powder Company* v. *Hercules Powder Company*, 96 California, 510.

Under these sections of the statute one who leases a compress and its good will may enter into a contract to refrain from carrying on a similar business within a specified county. The contract of lease in controversy limits such competition to fifty miles.

The evidence did not disclose whether a radius of fifty miles would have carried it without the boundaries of the county or not, but if fifty miles was an excessive restriction, the excess only was invalid and the restriction might be enforced within the limits of the law.

Such a contract being valid could not serve as a basis for concluding that it would be against public policy by creating an unnecessary restraint of trade, preventing competition and creating a monopoly.

The court below overlooked a well recognized principle which would control in any event in the disposition of this case. If the Gulf Compress Company itself was a monopoly, the Shawnee Compress Company could not for that reason prevent the specific performance of a contract for sale or lease, and, *a priori*, the minority stockholders could not interpose to prevent such performance. *Trenton Pottery Co.* v. *Olyphant*, 51 N. J. E. 507; *Diamond Match Co.* v. *Roeber*, 106 N. Y. 473; *Metcalf* v. *American School Furniture Co.*, 122 Fed. Rep. 115–120; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 547; *Willoughby* v. *Chicago Junction Ry. Co.*, 50 N. J. 656.

Mr. James R. Keaton and *Mr. Andrew Wilson*, with whom *Mr. John W. Shartel*, *Mr. Frank Wells* and *Mr. Noel W. Barksdale* were on the brief, for appellees:

The contract of lease from the Shawnee Compress Company to the Gulf Compress Company, of April 26, 1905, tended to create a combination unreasonably in restraint of trade, the prevention of competition and the establishment of a monopoly, therefore being against public policy. 26 Stat. at Large, 209, c. 647, § 3; Wilson's Statutes of Oklahoma, §§ 819, 820. The contract is illegal under the common law, also, which declares all contracts in unreasonable restraint of trade to be contrary to public policy and void.

Under the act of Congress above referred to not only contracts in unreasonable restraint of trade but every contract in restraint of trade is condemned. See *Pocahontas Coke Co.* v. *Powhatan Coal &c. Co.*, 60 W. Va. 508; *S. C.*, 56 S. E. Rep. 264; *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211.

In view of the evidence, it certainly cannot be said that any portion of the lease would unquestionably have been entered into regardless of the provisions for illegal restraint and hence

the entire contract must fall. Okla. Stat. 1893, § 810; Wilson's Ann. Stat. § 767; *Bishop* v. *Palmer*, 146 Massachusetts, 469; *Western Wooden-Ware Assn.* v. *Starkey*, 84 Michigan, 76; *Saratoga Co. Bank* v. *King*, 44 N. Y. 87; *Consumers' Oil Co.* v. *Nunnemaker*, 142 Indiana, 560; *More* v. *Bonnet*, 40 California, 251; *Frost* v. *More*, 40 California, 347.

A contract based upon several considerations, one of which is unlawful, is void. *Edwards Co.* v. *Jennings*, 89 Texas, 618; *Gage* v. *Fisher*, 5 N. D. 297; *Collins* v. *Merrell* (Ky.), 2 Met. 163; *St. L. J. & Co. R. R. Co.* v. *Mathers*, 104 Illinois, 257.

Furthermore, these provisions, in connection with the undisputed testimony to the effect that one of his purposes in procuring the execution of said lease on behalf of the Gulf Compress Company was to prevent unreasonable or unnecessary competition, renders the entire lease contract void, under § 3 of the Sherman law which applies to trade and commerce within the Territories as well as to interstate commerce. *Northern Securities Co.* v. *United States*, 193 U. S. 196; *Western Wooden-Ware Association* v. *Starkey*, 84 Michigan, 76; *Santa Clara Val. M. & L. Co.* v. *Hayes*, 76 California, 387; *Pacific Factor Co.* v. *Adler*, 90 California, 110; *Anheuser-Busch* v. *Houck*, 88 Texas, 184; *State* v. *Distilling Co.*, 29 Nebraska, 700.

Mr. Justice McKenna, after making the foregoing statement, delivered the opinion of the court.

The Supreme Court of the Territory, in its opinion, discussed only two of the questions urged upon its consideration, to wit (1) the legal power of the Shawnee Compress Company to execute the lease; and (2) the purpose in its execution to secure a monopoly of the business of compressing cotton and to unlawfully restrict competition. Of the first the court said: "We find no express authority to lease set out in the articles of incorporation, but we are nevertheless of the opinion the weight of authority is that when a strictly private corporation finds it cannot profitably continue operations it may lawfully make a lease of its entire property for a term of years."

The court cited cases, and continued (p. 238): "It is only when such exigencies exist as necessitate or render appropriate such or similar action that the right can be exercised." And it was observed that while there was no special finding of fact "in that regard by the trial court, yet this feature must necessarily have been considered, in the light of the evidence introduced at the trial, and the judgment based thereon."

The court further said that it found "ample authority in the record for that action" and, following the rule "often reiterated," the court further said, "it must hold that where the record contains some evidence to support the finding of the trial court," the judgment will not be disturbed.

The ruling sustaining the power of the Shawnee Company to execute the lease is attacked by appellees, but we do not find it necessary to express an opinion upon it, on account of the view we entertain of the second proposition.

In passing on the second proposition the Supreme Court decided adversely to the view taken by the trial court. The court therefore must either have considered that there was not some evidence supporting the conclusions of fact of the trial court or must have deemed the principles of law which the trial court upheld were not sustained by its conclusion of fact. As our review, in the nature of things, is confined to determining whether the court below erred, it follows that our reviewing power under the circumstances is coincident with the authority to review possessed by the court below, and therefore we are confined, as was the court below, to determining whether there was some evidence supporting the findings and whether the facts found were adequate to sustain the legal conclusions. *Southern Pine Lumber Co.* v. *Ward*, 208 U. S. 126.

The court, in its opinion, gives a summary of the pleadings and states the salient points of the lease to be that it conveys all of the property of the Shawnee Company to the Gulf Company, that the Shawnee Company covenants that it will not "directly or indirectly engage in the compressing of cotton

within fifty miles of any plant operated by the" Gulf Company, and that the Shawnee Company "agrees and pledges" to the Gulf Company "its good will, moral and legal support, and that it, individually and collectively, will render the 'Gulf Company' every assistance in discouraging unreasonable and unnecessary competition." And from the evidence the court deduces the following conclusions (p. 236):

"It further appears from the evidence at the trial that C. C. Hanson is the president of both the Atlanta Compress Company and the Gulf Compress Company, being a stockholder in each, and is the one who negotiated the lease in question. That the Atlanta Compress Company operates in the States of Alabama, Georgia and Florida, and was organized and is owned and controlled solely by the carriers for their benefit. That the board of directors and stockholders of said corporation are composed entirely of railroad officials. That the Atlanta Company controls the operation of twenty-five plants. That the Gulf Compress Company is a close corporation, chartered in Mobile, Alabama, and operating in the States of Alabama, Mississippi, Tennessee, Louisiana, Arkansas, Indian Territory and Oklahoma, and controlling the operation of twenty-seven compresses in those States, located at various points therein. That none of the Gulf Company's plants and the Atlanta Company's compresses are operated at the same points.

"It is further disclosed by the evidence that the capital stock of the Gulf Company, as originally incorporated, was $25,000.00, but that it has, within the past year, been increased to one million dollars, of which $600,000.00 is treasury stock. That its field of operation has been rapidly extended from Alabama to all the cotton-growing territory; that it is at the present time engaged in the purchase or leasing of compresses at various points, and, as testified to by its president, is 'prepared to buy or lease, whichever proposition suits us best.' It appears from the evidence that negotiations conducted by Mr. Hanson with Stubbs and Beatty for the lease of the Shaw-

nee plant were in pursuance of an effort to avoid, 'directly or indirectly, the possibility, if not probability, of unnecessary and unreasonable competition.'

"It is further disclosed by the testimony that the carrier pays for the compression of cotton, incorporating the cost thereof in its tariff. That tariffs for the hauling of cotton are established by the railroads as well as hauling districts or territories, within which the haul of cotton must be one way, or otherwise the higher rate, denominated the terminal rate, applies, rendering it unprofitable to ship to other than the established point in the hauling district."

And the court says that from these facts, and others referred to supporting them, it cannot be doubted that the object of the Gulf Company and its allied corporation, the Atlanta Compress Company, "is to prevent competition in compression of cotton throughout the cotton-producing States." The court declared it to be its judgment that "not only is the enterprise in which the Gulf Compress Company is engaged an unlawful one, as now conducted, but the contract in question in this case, being made to further its objects and purposes, is void on the ground that it is in unreasonable restraint of trade and against public policy."

This conclusion is the direct antithesis of that drawn by the trial court and we are brought to the inquiry, is it justified?

The evidence cannot be given in detail, and we may say at the outset that there is no question as to its weight—we are not confronted with conflicting testimonies. This branch of the case is constituted of the lease, principally of the testimony of one witness, the president of the Gulf Company, and of facts which are not disputed. The other testimony, a great deal of which is documentary, is mostly directed to the financial condition of the Shawnee Company as the inducement of the lease and to the proceedings taken to authorize its execution. There is also testimony directed against the purpose and motives of the appellees, and some tending to show that one of the officers and stockholders of the Shawnee Company

had been loaned money by the president of the Gulf Company, whereby control of the Shawnee Company might be obtained and the lease authorized. This, however, we may put out of view.

It may be conceded that the evidence shows that the Shawnee Company was financially embarrassed, and its condition might have justified a lease of its property if that had been all it did. It, however, covenanted for its assistance in discouraging competition against its tenant, and bound itself not to "directly or indirectly engage in the compressing of cotton within fifty miles of any plant operated by the tenant." So far it covenanted to aid in the restraint of trade. It went out of the field of competition; it covenanted not to enter into that field again, and it pledged itself to render every assistance to prevent others from entering it. And it could not misunderstand the purpose for which its lease was solicited. It was told by the president of the Gulf Compress Company. In a letter dated April 18, 1905, addressed to it by the president of that company, among other inducements, the following was expressed: "Our getting together on a lease proposed means the avoiding for each other, directly or indirectly, of the possibility, if not probability, of unnecessary competition." And what was the condition to which the Shawnee Company contributed? It appears from the letter just mentioned that the writer was president of two companies, which operated "forty odd compresses." Twenty-seven of them, it appears from the testimony, were operated by the Gulf Company, six only of which it owned. Most of the latter were acquired in the summer preceding the lease, and the president of the Gulf Company testified that "we are prepared to buy or lease, whichever proposition suits us best." To what object was the assembling in one ownership or management so many compresses, and keeping the means and declaring the purpose of acquiring more? The answer would seem to be obvious. The first effect would necessarily be the cessation of competition. If there was left a possibility of other compresses being con-

structed, it was made less by the power that could be opposed to them. The Gulf Company was a close corporation, which, starting in Alabama, rapidly extended from Alabama to all the cotton-growing territory. These are some of the points of the testimony which, taken in connection with other testimony, and with the terms of the lease and the restriction upon the Shawnee Company, support the conclusions of the Supreme Court of the Territory. This case presents something more than the lease of property by the Shawnee Company, induced or made necessary by financial embarrassment. It presents something more than the acquisition by the Gulf Company of another compress—of a mere addition to its business. It presents acts in aid of a scheme of monopoly. *Swift Co.* v. *United States*, 196 U. S. 375.

It does not appear whether the Supreme Court based its judgment upon the common law, the Sherman law, act of July 2, 1890, c. 647, 26 Stat. 209, or the statutes of Oklahoma. The appellees insist that the law applicable to the case comes from all three sources. The Sherman law provides that, "Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any territory of the United States or of the District of Columbia . . . is hereby declared illegal." And it has been decided that not only unreasonable but all direct restraints of trade are prohibited, the law being thereby distinguished from the common law. But it is contended that it was held in *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, and in *United States* v. *Joint Traffic Association*, 171 U. S. 505, that the sale of the good will of a business with an accompanying agreement not to engage in a similar business was not a restraint of trade within the meaning of the Sherman act.

Counsel has discussed with an affluent citation of cases the principle which regulates such contracts, and insists that the lease by the Shawnee Company conforms to such principle. The principle is well understood. The restraint upon one of the parties must not be greater than protection to the other

party requires, and it needs no further explanation than is given in *Gibbs* v. *Baltimore Gas Company*, 130 U. S. 396. The Supreme Court of the Territory recognized the principle, but said: "Tested by the general principles applicable to contracts of this character, this agreement is far more extensive in its outlook and more onerous in its intention than is necessary to afford a fair protection to the lessee." And in this conclusion the statute of the Territory may have had its influence. That statute makes void every contract by which any one is restrained from exercising a lawful profession, trade or business, except, however, that one who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city or part thereof. Wilson's Statutes, §§ 819, 820. It is clear that the lease of the Shawnee Company to the Gulf Company does not literally comply with this requirement. Whether it can be limited by construction, as it is contended by appellants it can be, we need not decide. As written, it was, no doubt, considered with other considerations by the court in concluding that "the real, the veritable purpose actuating the officers of the Gulf Compress Company, as disclosed by its plan of operation, and as manifested by the circumstances surrounding the conduct of its business and the results of its management by them is, beyond a reasonable question, to place within their power the control of the compress industry, by purchasing or leasing those plants which are advantageously located in each of the hauling districts or territories established by the carriers (railroads) in their cotton tariffs. Within certain boundaries the hauling must be one way, and when the Gulf Company seizes the strategic point, under its lease, competition within that district is annihilated."

Decree affirmed.